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ABSTRACT

This guide is to help the employer design and implement programs to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin, in all employment practices. Certain basic elements of most employment systems repeatedly have proved to result in discrimination, and certain basic steps have been found essential to eliminate discriminatory practices. The legal basis for affirmative action, including federal legislation, definitions of discrimination, equal employment opportunity, and basic steps are presented as a guide to developing an effective affirmative action program (publications, surveys, goals, timetables, recruitment, selection standards and procedures, salary structures, union contracts, training, support services, job related education). Volume II contains the appendices related to the text (sample documents, data sources, recruitment resources, guidelines and regulations, and Equal Employment Opportunity Commission publications). (Author/PG)

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EQUAL OPPORTUNITY AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT

A guidebook for employers

Volume 1

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TECHNICAL ASSISTANCE AVAILABLE TO DEVELOP AFFIRMATIVE ACTION PROGRAMS

Title VII directs EEOC to furnish technical assistance to aid voluntary compliance with the law. The Commission's Office of Voluntary Programs (with staff at Headquarters and in Regional Offices) has been established to provide such assistance. For aid in analyzing your employment system and developing procedures to implement this Guide, you may contact:

Office of Voluntary Programs
Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

or

The Regional Office serving your area.
(See inside back cover for list of Regional Offices).

This publication was developed and written by Evelyn M. Idelson, Education Programs Division, Office of Voluntary Programs.

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AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT

A guidebook for employers

Volume 1

January 1974

U.S. Equal Employment Opportunity Commission
Washington, D.C. 20506

"Our constitution is color-blind. But until our society translates that ideal into everyday practice, the decision-maker who is color-blind is blind to injustice."

U.S. Supreme Court Justice John Marshall Harlan (1896).

What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification . . . . (Title VII of the Civil Rights Act) proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation."

U.S. Supreme Court Justice Warren Burger (1971).

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FOREWORD

This is a guide to help you as an employer design and implement programs to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin, in all employment practices.

Equal Employment opportunity is the law. It is mandated by Federal, State and local legislation, Presidential Executive Orders and definitive court decisions.

However, there remains a need to communicate to employers why and how equal employment opportunity usually requires positive, affirmative action beyond establishment of neutral "non-discriminatory" and "merit-hiring" policies.

Experience in administering equal opportunity laws over the past 30 years has shown that many discriminatory practices of the past remain so deeply embedded in basic institutions of society that these practices continue to have extremely unequal effect on certain groups in our population, even when the employer has no conscious intent to discriminate.

The legal necessity for positive, affirmative action to remove these discriminatory practices which still pervade every phase of employment has been firmly established by the courts.

Many people who suffer effects of past and present discrimination are already qualified for better jobs, but continuing barriers throughout employment systems deny them equal opportunity. The major part of an Affirmative Action Program must be recognition and removal of these barriers, identification of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis.

There are other people who, because of a lifetime of unequal opportunity in many institutions of society, may need additional aid to become qualified for jobs on an equal basis. This, too, is part of affirmative action. But the need to help disadvantaged people become qualified should not obscure the primary legal obligation to change widespread employment barriers which daily discriminate against qualified people.

An effective affirmative action program not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservior of untapped human resources and skills among women and minority groups.

This Guidebook is not a "model" Affirmative Action Program. The specific barriers to equal job opportunity and specific ways to overcome them will differ in each organization. The first requirement of an effective program is a detailed "self-analysis" of your own organization, to identify your problems, action priorities and procedures.

However, certain basic elements of most employment systems repeatedly have proved to result in discrimination, and certain basic steps have been found essential to eliminate discriminatory practices.

These steps are presented as a starting point for developing a non-discriminatory employment system. The Equal Employment Opportunity Commission cannot guarantee that following this guide will provide "immunity" from charges of discrimination which may be filed against you. However, if you undertake the affirmative actions recommended with the same commitment, efforts and monitoring applied to your other basic organizational goals, the resulting employment system should provide equal opportunity as required by law.

AFFIRMATIVE ACTION = RESULTS

The most important measure of an Affirmative Action Program is its RESULTS.

Extensive efforts to develop procedures, analyses, data collection systems, report forms and fine written policy statements are meaningless unless the end product will be measurable, yearly improvement in hiring, training and promotion of minorities and females in all parts of your organization.

Just as the success of a company program to increase sales is evaluated in terms of actual increases in sales, the only realistic basis for evaluating a program to increase opportunity for minorities and females is its actual impact upon these persons.

The essence of your Affirmative Action Program should be:

- Establish strong company policy and commitment.
- Assign responsibility and authority for program to top company official.
- Analyze present work force to identify jobs, departments and units where minorities and females are underutilized.
- Set specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.
- Make every manager and supervisor responsible and accountable for helping to meet these goals.
- Re-evaluate job descriptions and hiring criteria to assure that they reflect actual job needs.
- Find minorities and females who qualify or can become qualified to fill goals.
- Review and revise all employment procedures to assure that they do not have discriminatory effect and that they help attain goals.
- Focus on getting minorities and females into upward mobility and relevant training pipelines where they have not had previous access.
- Develop systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, find out why, and make necessary changes.

I. THE LEGAL BASIS FOR AFFIRMATIVE ACTION

A. WHAT IS DISCRIMINATION? WHAT IS EQUAL EMPLOYMENT OPPORTUNITY?

Equal Employment Opportunity -- the right of all persons to work and to advance on the basis of merit, and ability and potential, has deep roots in our American heritage. But for many years this right has been severely restricted by discriminatory employment practices operating against various groups in our society. Original actions to prohibit such discrimination by State Fair Employment laws and Presidential Orders in the 1940's and 1950's proved insufficient. Finally, Congress provided Federal legal enforcement for equal employment in the Civil Rights Act of 1964 with strengthening amendments added in 1972.

Title VII of the Act prohibits discrimination because of race, color, religion, sex or national origin, in all employment practices, including hiring, firing, promotion, compensation and other terms, privileges and conditions of employment. The U. S. Equal Employment Opportunity Commission (EEOC) was created to administer Title VII and to assure equal treatment for all in employment.

Many other State and Federal laws and Executive Orders also prohibit employment discrimination.*

When equal employment laws first were enacted, it was generally believed that discrimination took place primarily through conscious, overt actions against individuals; therefore, these laws expressly prohibited such actions, and, to some degree, overt discrimination has declined.

But destructive, persistent employment discrimination remains, confirmed by the statistics of unemployment, non-employment, underemployment and incomes of minorities and women, by the daily experience of agencies administering equal employment laws, and by findings of the courts. Much discrimination, particularly against females, persists through intentional acts. But the most pervasive discrimination today results from normal, often unintentional and seemingly neutral practices throughout the employment process. Employment systems

---

* See pages 12-15 for summary of Title VII and other Laws and Orders prohibiting employment discrimination.

perpetuate discriminatory effects of past discrimination even when original discriminatory acts have ceased, and continue to discriminate, daily, creating very unequal opportunities for many minorities and women.

Identification and elimination of such "systemic" discrimination resulting from regular employment practices is the major focus of equal employment efforts today.

Title VII, the Courts, Executive Order 11246 and Affirmative Action

The courts, in interpreting equal employment law, have clearly recognized the existence of "systemic" discrimination, and the need to eliminate it through specific remedial actions. Title VII provides that when a court finds employment discrimination it may "order such affirmative action as may be appropriate" to eliminate it. Consistently, where courts have found that the effects of employment practices -- regardless of their intent -- discriminate against a group protected by law, they have ordered specific affirmative actions to eliminate present and future discrimination and to provide equitable remedies for consequences of past discrimination.

The need for affirmative action was first recognized in Presidential Executive Orders from 1961 through 1967 requiring government contractors to take positive, continuing, result-oriented affirmative action to eliminate job discrimination.

The present Executive Order 11246 (as amended by Executive Order 11375) requires all major non-construction contractors and subcontractors to conduct their own self-analysis to determine if their employment system has discriminatory effects, and to take appropriate remedial affirmative action, without need of any legal proceedings. The Order requires large contractors to implement written Affirmative Action Plans, and regulations spell out detailed requirements for such plans.*

Title VII does not explicitly require affirmative action, But when there is a finding of discrimination through compliance investigation or through company self-audit, the Commission is guided by remedies and requirements outlined by the Federal courts. The courts have ordered comprehensive

* See pp. 13-14 for Summary of Executive Order requirements.

affirmative action, including numerical hiring and promotion goals, where necessary, to compensate for effects of past discrimination.

In March 1972, Congress amended Title VII, giving EEOC direct access to the courts. As a result, legal actions have increased substantially, and will increase far more rapidly in the future. The impact of legal rulings and court-ordered affirmative remedies now will be felt far more directly by employers.

It is important, therefore, to know what the courts have identified as discrimination prohibited by law, and what kinds of remedies have been ordered. The law is developing constantly; however, there is no doubt of the consistent trend in court decisions, developing these basic principles:

- Employment discrimination, by definition, is class-wide discrimination. Where it is found to exist, action to eliminate it must apply to all members of the "affected class" to which an individual complainant belongs. This concept of "class discrimination" has been very broadly interpreted by the courts.[1]

- It is the consequences of employment practices, not the intent, which determines whether discrimination requiring remedial action exists.[2]

- Any employment practice or policy, however, neutral in intent, and however fairly and impartially administered, which has a "disparate effect" on members of a "protected class" (those groups specified in the law) or which perpetuates the effect of prior discriminatory practices, constitutes unlawful discrimination unless it can be proven that such policy is compelled by "business necessity."[3] (See below)

  In the words of Supreme Court Chief Justice Warren Burger:

  > "Under the (Civil Rights) Act, practices, procedures, . . . neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to freeze the status quo of prior discriminationatory employment practices. . . . Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation."[4]

- Statistics -- such as highly disproportionate representation of minorities or females in any job classification in relation to their presence in the population or work-

force -- constitute strong evidence of discriminatory practices. Where such statistics exist, the burden of proof is on the employer to show that they are not the result of overt or institutional discrimination.[5]

- To justify any practice or policy which has "disparate effect" on groups protected by the law, an employer must demonstrate compelling "business necessity" and that no alternative non-discriminatory practice can achieve the required purposes.[6]

  Courts have interpreted "business necessity" very narrowly, requiring overriding evidence that a discriminatory practice is "essential" to safe and efficient operation of the business, and/or a showing of extreme adverse financial impact.[7]

The message conveyed by these legal rulings is clear: if a statistical survey shows that minorities and females are not participating in your workforce at all levels in reasonable relation to their presence in the population and the labor force, the burden of proof is on you to show that this is not the result of discrimination, however inadvertent. There is a strong probability that some part of your system is discriminating, and that unless you make changes you may be subject to legal action.

The changes required were summarized by the Supreme Court:

> "What is required . . . is the removal of artifical, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissable classification."[8]

The "artificial, arbitrary and unnecessary barriers" identified by the Supreme Court and by many other federal courts, include practices and policies of recruitment, selection, placement, testing, systems of transfer, promotion, seniority, lines of progression, and many other basic terms and conditions of employment.[9]

Removing these barriers requires positive, affirmative action to develop new policies and practices that provide all persons opportunity for employment on an equal basis.

B. COURT-ORDERED REMEDIES: BACK PAY AND AFFIRMATIVE ACTION

Where the courts have found discrimination, they have ruled that remedies must not only open the doors to equal employment for all, but also must "make whole" and "restore the

rightful economic status" of all those in an "affected class" i.e.; those who have suffered and continue to suffer effects of past discrimination. In practice, this has resulted in extremely expensive assessments for back pay and legal costs. Under Title VII, back pay may be awarded to an entire "affected class" extending up to two years prior to the date a discrimination charge is filed. The lengthy processes of investigation, attempted conciliation and legal action often add years to this period, at great additional cost to the employer.

Remedial affirmative action programs ordered by the courts have varied in nature and scope, depending on the type of discrimination found.

Courts have required fundamental changes in all aspects of employment systems and they have specified numbers or percentages of minorities and females to be hired, trained, or promoted in specific job categories, until certain goals are reached. They usually require an employer to undertake such action quickly, with follow-up monitoring by the court.

Here are some recent examples of the kinds of practices ruled discriminatory by the courts, costs to the employers, and nature of affirmative action ordered:

- Anaconda Aluminium Company was ordered to pay $190,000 in back wages and court costs to 276 women who alleged that the company maintained sex-segregated job classifications. Jobs formerly classified "Female" and "Male" had been reclassified as "light" and "heavy", but women still were prevented from transferring to "heavy" jobs, and after layoffs, the company hired new male employees into "heavy jobs" rather than recalling females with seniority in "light" jobs. The company was ordered to assure opportunity for all jobs to anyone who could qualify.[10]

- Virginia Electric Power Company was ordered to pay $250,000 to compensate black workers for wages they would have earned if they had not been kept from promotion by a discriminatory system. The company was also ordered to eliminate use of high school diploma (or equivalent), and aptitude tests as hiring or promotion criteria for blue collar jobs, because these selection methods were not job-related; to eliminate existing transfer and promotion systems based on job and departmental seniority (which perpetuated effects of past discrimination) and allow upward mobility movement based on total employment seniority. Affirmative hiring was

also ordered: at least 25% of new union hires were to be nonwhites, until their level of employment in union jobs reached 21.5% Goals were also set for clerical jobs. 11/

- Black employees of the Lorillard Corporation were awarded $500,000 in back pay when the court found that departmental seniority and limited transfer rights in contracts between this company and its union limited access of blacks to most jobs. Every black employee who had suffered loss of promotional and pay-raise opportunity was compensated according to what he would have received, based on company seniority, had the discriminatory practices not existed. The company was ordered to establish plant-wide seniority and to assure that no employee transferring to a department from which he had been excluded would receive a wage cut. Company and union were ordered to change seniority and assignment systems to assure that blacks had equal opportunity for assignment and promotion to all jobs. 12/

- The Household Finance Corporation paid more than $125,000 to white-collar female employees who charged they were denied promotion because of sex. Under terms of a consent decree, the company also agreed to hire 20% females for branch representives openings (subject to availability) until such representatives were 20% female, and to hire 20% from specified minority groups for clerical, credit and branch representative jobs until total employees reached 65% of their population in the labor area. HFC also agreed to train female and minority employees to help them qualify for better jobs where they are underrepresented. 13/

More than 55 million dollars was found owing under the Equal Pay Act* to 129,000 employees (mostly female) from 1964 through January 1973. In one case alone, Wheaton Glass Company paid more than $900,000 in back wages and interest to 2000 female employees. 14/

- Sardis Luggage Company was ordered to pay $120,000 in back wages to black plaintiffs and "the class they represent", plus $25,000 in attorney fees and court costs. This company was also ordered to hire black workers in a 2-1 ratio for four years, until the combined production and clerical workforce has a ratio of blacks in proportion to the nonwhite workforce in the company's labor area. 15/

*See Page 14.

- Libbey Owens Ford Co., under a consent decree, agreed to open bidding for all jobs to women, including those previously barred because of state laws requiring overtime pay and weightlifting restrictions. The company and its union agreed to start a training program to aid women employees in transferring to better jobs, to undertake specific recruitment and advertising to attract women applicants and -- depending upon availability -- to select two women out of the next four foremen hired in certain departments.[16]

The AT&T Agreement: Important Precedent and Guide

The extent of legally required affirmative action to remedy discrimination and effects of past discrimination is reflected in the major agreement signed by American Telephone and Telegraph Company with EEOC and the Department of Labor, after more than two years of litigation. This agreement, confirmed by a Federal court consent decree, may serve both as a costly warning and a helpful guide to other employers.[17] Its major provisions include:

- Approximately $15 million -- by far the largest single back pay award ever made -- in one-time payments to thousands of employees charged to have suffered from discriminatory employment practices.

- An additional estimated $50,000,000 in yearly payments for promotion and wage adjustments to minority and female employees.

- Affirmative actions to include:

  - Specific hiring and promotion targets, including goals to significantly increase utilization of women and minorities in every job classification. These targets will be reviewed regularly by EEOC and the Office of Federal Contract Compliance.

  - Goals for employing males in previously all-female jobs.

  - Women and minorities now in non-management non-craft jobs will be able to compete for craft jobs based on their qualifications and company seniority.

  - Promoted employees will be paid, generally, on the basis of their length of service.

> All female college graduates hired since 1965 will be assessed to determine interest and potential for higher level jobs and a specific development program will prepare these women for promotions.

After two years contesting extensively documented government charges of discrimination, maintaining that the company was carrying out an effective affirmative action program, an AT&T official statement summed up:

> ". . . Rapidly evolving legal requirements plus . . . new administrative rules and guidelines have changed the ground rules. Now that we have cleared away the uncertainties, we are eager to get with the job."

C. NUMERICAL GOALS AND TIMETABLES

It is clear from these legal developments that where violations of the law are found, broad remedial action to "remove vestiges of past discrimination . . . eliminate present and assure the non-existence of future barriers to full enjoyment of equal job opportunities" will be required, and that remedial action often requires some kind of special treatment for a period of time.

Courts increasingly are requiring companies and unions to provide pre-apprentice and apprentice training, to hire, promote and train minorities and females who have suffered from discrimination in specified numerical ratios, in specified job categories, until specified remedial goals are reached. 18/

Although Title VII bars preferential hiring simply to eliminate racial employment imbalances in relation to population ratios, Federal courts consistently have found numerical goals and timetables to be a justified and necessary remedy and means of eliminating the present effects of past discriminatory practices. 19/

D. ADVANTAGES OF VOLUNTARY AFFIRMATIVE ACTION TO THE EMPLOYER

Employers who hold or seek contracts with the Federal Government are required to implement written Affirmative Action Programs.* While Title VII and EEOC do not require any specific form of affirmative action, court rulings have established that affirmative action often is required when a finding of discrimination is made, and the Commission's compliance activities are based upon remedies outlined by the courts.

* See Pages 13-14.

Findings of discrimination may be made by EEOC or other compliance agencies, or by an employer's own self-audit. The great weight given by the courts to statistical employment data indicates it is to your advantage to conduct a thorough self-audit voluntarily to determine possible existence of discriminatory practices and needed remedial action.

Employers who have not yet implemented effective affirmative action programs will find that it makes good business sense to identify and revise employment practices which have discriminatory effects, before the Federal Government is called in, with the prospect of costly litigation, back pay awards, and court-imposed goals, timetables and changes in employment practices.

Affirmative action will help you avoid expensive legal judgements and sudden disruption of your regular operations and will help you qualify for government contracts. It can also help you cut costs and increase productivity through tapping and developing seriously underutilized human resources, and reduced employee turnover when jobs and promotions are based on merit.

E. LAWS AND ORDERS REQUIRING EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

1. Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972).[20]

Title VII prohibits discrimination because of race, color, religion, sex or national origin, in any term, condition or privilege of employment.

The Equal Employment Opportunity Act of 1972 greatly strengthened the powers and expanded the jurisdiction of the Equal Employment Opportunity Commission (EEOC) in enforcement of this law.

As amended, Title VII now covers:

- All private employers of 15 or more persons
- All educational institutions, public and private*
- State and local governments*
- Public and private employment agencies

* New coverage added by 1972 Amendments.

- Labor unions with 15 or more members
- Joint labor-management committees for apprenticeship and training

EEOC receives and investigates job discrimination complaints, and when it finds reasonable cause that the charges are justified, attempts, through conciliation, to reach an agreement eliminating all aspects of discrimination revealed by the investigation. If conciliation fails, the 1972 Amendments give EEOC power to go directly to court to enforce the law. Among other important strengthening provisions, the 1972 Act also provides that discrimination charges may be filed by organizations on behalf of aggrieved individuals, as well as by employees and job applicants themselves. (The latter may also go to court directly to sue employers for alleged discrimination actions.)

With these new powers, EEOC legal actions against employers violating the law will increase rapidly and significantly. Five new regional litigation centers have been established, with substantial legal staff to provide more rapid and effective court action.

The certainty of increased legal action, and consistent record of court-required affirmative action to remedy discrimination found under Title VII, emphasize the advantage to you, as an employer, of instituting an effective affirmative action program voluntarily and speedily.

2. Executive Order 11246 (as amended by Executive Order 11375.[21]

This Order issued by the President in 1965, requires Affirmative Action Programs by all Federal contractors and subcontractors and requires that firms with contracts over $50,000 and 50 or more employees develop and implement written programs, which are monitored by an assigned Federal compliance agency.

Specific requirements for such "result-oriented" programs are spelled out in Revised Order No. 4 issued by the Office of Federal Contract Compliance, U.S. Department of Labor.** These requirements include identifying areas

*New coverage added by 1972 Amendments.

**See Appendix D. As of December 1, 1973, OFCC was in process of further revising Order No. 4 and a new Order No. 14. For latest information contact OFCC. (See p. 66 for address.).

of minority and female "underutilization," numerical hiring and promotion goals and other actions to increase minority and female employment in job classifications where they are currently underutilized.

Firms found not in compliance with Order No. 4 may face termination or cancellation of contracts or be barred from future contracts.

Requirements of Order No. 4 are similar to court interpretations of Title VII requirements. The actions suggested in this Guidebook are in accordance with Order No. 4 requirements and are necessary for all employers covered by Title VII whether or not they are government contractors.

3. The Equal Pay Act of 1963[22/] requires all employers subject to the Fair Labor Standards Act (FLSA) to provide equal pay for men and women performing similar work. In 1972, coverage of this Act was extended beyond employees covered by FLSA to an estimated 15 million additional executive, administrative and professional employees (including academic, administrative personnel and teachers in elementary and secondary schools) and to outside salespeople.*

4. The Age Discrimination in Employment Act of 1967[23/] prohibits employers of 25 or more persons from discriminating against persons 40-65 in any area of employment because of age.

5. Title VI of the Civil Rights Act of 1964[24/] prohibits discrimination based on race, color or national origin in all programs or activities which receive Federal financial aid. Employment discrimination is prohibited if a primary purpose of Federal assistance is provision of employment (such as apprenticeship, training, work-study, or similar programs). Revised Guidelines adopted in 1973 by 25 Federal agencies prohibit discriminatory employment practices in all programs if such practices cause discrimination in services provided to program beneficiaries. This could be unequal treatment of beneficiaries or in hiring or assignment of counsellors, trainers, faculty, hospital staff, social workers or others in organizations receiving Federal funds. Although Title VI does not explicitly bar sex discrimination, various Federal agencies have prohibited such discrimination in their own regulations.

*Through Title IX of the Education Amendments Act of 1972. See p. 15.

6. State and Local Laws

Many state and local government laws prohibit employment discrimination. When EEOC receives discrimination charges, it defers them for a limited time period to certain state and local agencies with comparable jurisdiction and enforcement sanctions. Determination of which agencies meet this "deferral" standard is a continuing process.[25/] Procedures of these agencies and their requirements for affirmative action vary, but if satisfactory remedies are not achieved, charges revert to EEOC for resolution. In any case, employers should be familiar with requirements of their local laws.

7. The National Labor Relations Act and Related Laws.[26/]

Discrimination on the basis of race, religion, or national origin may violate rights arising under these laws. It may be unlawful for employers to participate with unions in the commission of any discriminatory practices unlawful under these Acts, or to practice discrimination in a manner which gives rise to racial or other divisions among employees, to the detriment of organized union activity; or for unions to exclude individuals discriminatorily from union membership, thereby causing them to lose job opportunities, to discriminate in the representation of union members or non-members in collective bargaining, in processing of grievances, or in other respects, or to cause or attempt to cause employers to enter into discriminatory agreements or otherwise discriminate against union members or non-members.

8. Title IX, Education Amendments Act of 1972, [27/] In addition to extending coverage of the Equal Pay Act (see p. 14), prohibits discrimination on the basis of sex against employees or students of any educational institution receiving Federal financial aid. Provisions covering students are similar to those of Title VI of 1964 Civil Rights Act. (See p. 14).

9. Other Laws

Employment discrimination has also been ruled by courts to be prohibited by the Civil Rights Acts of 1866 and 1870 and the Equal Protection Clause of the 14th Amendments to the Constitution. Action under these laws on behalf of individuals or groups may be taken by individuals, private organizations, trade unions and other groups.

II. BASIC STEPS TO DEVELOP AN EFFECTIVE AFFIRMATIVE ACTION PROGRAM

A. Issue Written Equal Employment Policy and Affirmative Action Commitment.

B. Appoint a Top Official with Responsibility and Authority to Direct and Implement Your Program.

1. Specify Responsibilities of Program Manager

2. Specify Responsibilities and Accountability of all Managers and Supervisors.

C. Publicize Your Policy and Affirmative Action Commitment.

1. Internally: To managers, supervisors, all employees and unions;

2. Externally: To sources and potential sources of recruitment, potential minority and female applicants, to those with whom you do business, and to the community at large.

D. Survey Present Minority and Female Employment by Department and Job Classification.

1. Identify present areas and levels of employment

2. Identify Areas of Concentration and Underutilization.*

3. Determine Extent of Underutilization.

E. Develop Goals and Timetables to Improve Utilization of Minorities, Males and Females in Each Area Where Underutilization Has Been Identified.

F. Develop and Implement Specific Programs to Achieve Goals

This is the heart of your program. Review your entire employment system to identify barriers to equal employment opportunity; make needed changes to increase employment and advancement opportunities of minorities and females. These areas need review and action:

1. Recruitment: All Personnel Procedures.

*See pp. 23-24 for definitions of "concentration" and "underutilization".

2. Selection Process: Job Requirements; Job Descriptions, Standards and Procedures. Pre-Employment Inquiries; Application Forms; Testing; Interviewing.

3. Upward Mobility System: Assignments; Job Progressions; Transfers; Seniority; Promotions; Training.

4. Wage and Salary Structure.

5. Benefits and Conditions of Employment.

6. Layoff; Recall; Termination; Demotion; Discharge; Disciplinary Action.

7. Union Contract Provisions Affecting Above Procedures.

G. Establish Internal Audit and Reporting System to Monitor and Evaluate Progress in Each Aspect of the Program.

H. Develop Supportive In-House and Community Programs.

A. ISSUE WRITTEN EQUAL EMPLOYMENT POLICY STATEMENT AND AFFIRMATIVE ACTION COMMITMENT

Most fine-sounding statements issued by firms in the past decade have not substantially improved job opportunities for minorities and females. A written statement is only a beginning. To be effective, the statement's provisions must be enforced by top management, and all employees must be made aware that Equal Employment Opportunity is basic company policy.

The Chief Executive should issue a firm statement of personal commitment, legal obligations and the importance of EEO as a business goal. He or she should assign specific responsibility and accountability to every executive and manager. The statement should include, but not necessarily be limited to these elements:

- Equal employment opportunity for all persons, regardless of race, creed, color, sex, national origin or age is fundamental company policy. EEO is a legal, social, and economic necessity for the company.

- The equal employment policy will require special affirmative action throughout the company to overcome effects of past discrimination.

- Therefore, it can not be merely a "neutral" policy, but requires new goal-setting programs with measurement and evaluation factors similar to other major company programs. Accountability for goal-achievement is established to assure that Affirmative Action shares equal importance with other business goals.

- Affirmative Action will affect all employment practices including (but not limited to) recruiting, hiring, transfer, promotions, training, compensation, benefits, layoff and terminations.

- Responsibility for the Affirmative Action Program is assigned to a major company executive. All management personnel share in this responsibility and will be assigned specific tasks. Management performance on this program will be evaluated as is performance on other company goals.

- Successful performance on Affirmative Action goals will provide positive benefits to the company through fuller utilization and development of previously underutilized human resources.

B. APPOINT A TOP OFFICIAL WITH RESPONSIBILITY AND AUTHORITY TO IMPLEMENT YOUR PROGRAM

Many Affirmative Action Programs are not successful because the individual named to head them does not have sufficient status, authority, time or staff. A meaningful Affirmative Action Program affects operations of every part of your organization. There is bound to be some disagreement and resistance.

The importance of this program is indicated from the start by the individual you place in charge and the authority the position carries.

- Appoint a top management official as Director or Manager of your Affirmative Action Program, directly responsible to the Chief Executive. He or she should be an executive with proven ability to accomplish major program goals.

- Managing the Affirmative Action Program requires a major time commitment; it cannot be added on to an existing full-time job.

- Appointing qualified minority and/or female employees to head or staff your program may offer good role models for present and potential employees, add credibility to the program and provide special understanding for some of the problems involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the company to achieve them.

1. Responsibilities of the Affirmative Action Program Manager should include, but not necessarily be limited to:

   - Developing policy statement, a written Affirmative Action Program, internal and external communication procedures.

   - Assisting line management in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

   - Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed. Assuring that such action is taken.

- Reporting, at least quarterly, to the Chief Executive on progress of each unit in relation to company goals.

- Serving as liaison between company, government regulatory agencies, minority and women's organizations and other community groups.

- Assuring that current legal information affecting affirmative action is disseminated to responsible officials.

In addition, consider creating an Equal Employment Advisory Committee, with membership including minorities and females from various job levels and departments, to meet regularly with the Affirmative Action Manager and to provide two-way communication and suggestions on various aspects of the program. Such committees have proven extremely helpful where they have been established.

2. Responsibilities of Other Department Heads and Managers

All company officials and managers should clearly understand their own responsibilities for carrying out equal employment opportunity and affirmative action as a basic part of their jobs.

In a large organization, heads of each location or division should participate in developing the affirmative action program for their division (identifying problem areas, establishing local and unit goals and timetables.) However, local or divisional plans should be reviewed by the Affirmative Action Program Manager and where necessary, reviewed to meet overall goals.

C. PUBLICIZE YOUR AFFIRMATIVE ACTION PROGRAM

1. Internally:

a. Managers and Supervisors should be fully informed by:

- Written communication from the Chief Executive.

- Inclusion of the Affirmative Action Program and policy in company operations manuals.

- Special meetings held regularly to discuss the program, their individual responsibilities and review progress.

All Managers and Supervisors should be told that their performance on Affirmative Action goals will be rated along with other criteria in evaluation for promotions, merit increases, raises and bonuses, and that inadequate cooperation or obstruction of the program will incur penalties or possible termination.

Educational materials and training sessions to communicate legal requirements for affirmative action should spell out specific responsibilities affecting the operations of each supervisor. After legal obligations and company commitment are clearly communicated, small discussion meetings and "awareness" training may be helpful in sensitizing managers and supervisors to the kinds of employment barriers and attitudinal stereotypes which often hinder equal employment opportunity.*

b. All employees should be informed of company policy through such means as:

- Company EEO policy statement and Federal EEO posters placed on bulletin boards, areas near time clocks and in employment offices.
- Publicity in company newsletters and publications; notices in pay envelopes.
- Policy inclusion in employee handbooks and Annual Reports.
- Articles and pictures in company publications, featuring minority and female employees in varied higher level and non-traditional jobs.
- Meetings with minority and female employees to request their suggestions in developing your Affirmative Action Program.
- Presentation and discussion of the Program as part of employee orientation and all training programs.
- Copies of the Affirmative Action policy statement and summary of key program elements provided to employees.

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*See p. 61.

When the program is developed, special meetings with all employees to explain goals will help communicate seriousness of company commitment and prevent "backlash" from some who may fear loss of their jobs or opportunities. Specific information helps prevent negative reactions and hostility towards new or promoted employees.

c. Union officials should be invited to cooperate in developing and implementing the program from the start. Trade unions are specifically subject to Title VII requirements; their failure to cooperate in removing discriminatory practices has resulted in legal action against many unions. Union cooperation should be sought to remove discriminatory factors revealed in the analysis of your employment practices. However, union refusal to cooperate in such action does not eliminate the employer's obligation to eliminate identified discriminatory practices.*

Involving the union when you start to develop the program can help prevent or lessen potential conflict over specific actions to implement it.

2. Externally:

a. Regular Recruitment Sources. Write annual personal letters, and as special employment needs develop, to all regular recruitment sources. Include a copy of your equal employment policy and state your interest in interviewing and hiring previously underrepresented groups for all positions.

Contact: appropriate media, public and private employment agencies,** educational institutions.

Inform these sources that you cannot legally continue to use their services if they do not refer applicants on a non-discriminatory basis, and that referrals of male, female, minority and non-minority applicants are expected for all jobs at all levels.

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*For discussion of specific issues involving the union contract, see pages 57-59.

**Employment agencies are specifically covered by Title VII, and subject to legal action if they do not comply. See 42 U.S.C. $2000e-2(b).

- Inform media that help-wanted ads cannot be placed in sex-segregated columns. Include statement that you are an "Equal Opportunity Employer (Male-Female or M/F)" in all advertising. Back this up by picturing minorities, women and men in your advertising in non-stereotyped jobs, and publicizing hiring, promotions, training opportunities and other facets of your Affirmative Action Program in general and special (minority and women's) media.*

b. New recruiting sources. Contact media, agencies, organizations, schools, colleges, community groups and others who have special contacts with women and minority groups.*

c. Notify all subcontractors, vendors and suppliers in writing of your Equal Employment Policy, requesting appropriate supportive action on their part.

Include an Equal Opportunity clause in all purchase orders, contracts, leases, etc., with revocation clauses for non-compliance. (Some companies explicitly state that they will only do business with firms implementing affirmative action programs.)

D. SURVEY AND ANALYZE MINORITY AND FEMALE EMPLOYMENT BY DEPARTMENT AND JOB CLASSIFICATION

This is the first step toward defining your specific affirmative action goals.

1. Identify Present Areas and Levels of Employment.

- First, identify the number and percentage of minority and female employees currently employed in each division, office and major job classification.

This survey will help you identify jobs, departments or units in which there may be significant underutilization or concentration of minorities and/or females and males.

Underutilization has been defined as having fewer minorities or women in a particular job category than would reasonably be expected by their presence in the relevant labor market.**

*For additional suggestions see Recruitment, pp. 29-35.

**See pp. 25-26 for further details on measuring underutilization.

Underutilization also means employing persons in jobs that do not make adequate use of their skills and training. "Concentration" means more of a particular group (females, males, Spanish Surnamed or Negro males/females, etc.,) in a job category or department than would reasonably be expected by their presence in the workforce. Where statistics reveal significant underutilization or concentration, there is a strong probability that discriminatory practices are operating in some aspects of your employment system, and that you should take remedial action to eliminate such practices.

It is important to use detailed job classifications as they appear in collective bargaining agreements or payroll records, rather than the broad categories reported on EEO-1 forms, to reveal specific levels of pay and responsibility and help identify avenues or barriers to advancement.*

The survey should provide statistics for each major minority group present in your area;** Negro(N)***, Spanish-American(SSA), Oriental(O)***, American Indian(AI), separately by sex, as well as total employment by sex.

A format such as that on the following pages might be used by each organizational unit.****

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*Reporting requirements under Executive Order 11246 define "job classifications" as "one or a group of jobs having similar content, wage rates and opportunities".

**A group which constitutes 2% or more of the population of your relevant labor area. These groups are identified in Census data. See Appendix B.

***EEO Reporting Forms traditionally have used the categories "Negro" and "Oriental". In the future it is likely that these will be replaced by "Black" (B), and "Asian-American" (AA). Employers may use either heading.

****See pp. 29, 45-48, & 55-56 for suggestions on forms to monitor the selection and upward mobility processes. See Appendix A for sample forms. Most of this data must be collected on a quarterly basis by government contractors, and is necessary for effective monitoring and evaluation of progress by all employers covered by Title VII.

24-A

SURVEY OF CURRENT EMPLOYMENT*

(This survey should be prepard by each organizational unit and job categories should indicate those in same line of progression)

JOB CATEGORIES		TOTAL EMPLOYEES				MINORITY GROUP EMPLOYEES								
		Wage/Salary or Grade	Total Employees	Total Male	Total Female	MALE				FEMALE				
						N	SSA	O	AI	N	SSA	O	AI	
OFFICIALS AND MANAGERS	Total													
PROFESSIONALS	Total													

* This and other sample forms are examples only. They are not officially required forms. This Chart is similar to the EEO-1 Reporting Form which must be filed annually by all employers of more than 100 persons and by government contractors (See Appendix A). For internal affirmative action audits, more detailed information is needed to identify levels of jobs and compensation. This chart suggests subdivisions under each major job category, which may indicate common job classifications, skill groupings and/or salary range. Note: Government contractors are required to conduct separate utilization analyses for minorities and females. Many employers thus find it useful to record detailed data separately for these groups. However, this is not required. It is necessary that data indicate breakdowns by race and sex, as above.

See Appendix A for more detailed information on job categories and for definitions of minority groups and how to identify them.

SURVEY OF CURRENT EMPLOYMENT

JOB CATEGORIES	Wage/Salary or Grade	TOTAL EMPLOYEES: Total Employees	TOTAL EMPLOYEES: Total Male	TOTAL EMPLOYEES: Total Female	MINORITY GROUP EMPLOYEES: MALE: N	MALE: SSA	MALE: O	MALE: AI	MINORITY GROUP EMPLOYEES: FEMALE: N	FEMALE: SSA	FEMALE: O	FEMALE: AI
OPERATIVES (SEMI-SKILLED) Total ____												
LABORERS (UNSKILLED) Total ____												
SERVICE WORKERS Total ____												
TOTALS												

SURVEY OF CURRENT EMPLOYMENT

JOB CATEGORIES	Wage/Salary or Grade	TOTAL EMPLOYEES: Total Employees	TOTAL EMPLOYEES: Total Male	TOTAL EMPLOYEES: Total Female	MINORITY GROUP EMPLOYEES: MALE N	MALE SSA	MALE O	MALE AI	FEMALE N	FEMALE SSA	FEMALE O	FEMALE AI	
SALES WORKERS Total													
OFFICE & CLERICAL Total													
CRAFTSMEN (SKILLED) Total													

2. Identify Areas of Underutilization and Concentration.

Your employee survey may indicate that certain groups are underutilized in certain areas of your work force.

Experience under Title VII and Executive Order 11246 has consistently shown these greatest areas of underutilization:

For women (of all groups) and minority males: Officials and Managers; Professionals; Technicians; Skilled Craftworkers. For minorities: Sales workers, Office and Clerical; For women: Sales workers (except over-the counter-workers in some retail employment); Semi-skilled Craftworkers.

These probably will be priority areas for action. You should also identify job areas now occupied primarily or solely by minorities and/or females, and set goals for recruiting and placing males and non-minorities in these jobs. To set specific goals, you need more information on the extent of underutilization in relation to availability of such workers in your labor area.

3. Determine Extent of Underutilization of Minorities and Females.

Survey your labor area, (the area in which you can reasonably expect to recruit)* to determine at least the following factors:**

- the percentage of each minority group,*** in total population of the area.

*Your labor area should generally be the Standard Metropolitan Statistical Area (SMSA) for which Census Bureau and other employment data is available. An Affirmative Action Program should include "an area of reasonable recruitment." For example: if you are located in a predominantly white county 30 miles from an urban area with considerable minority population, the urban area is an area of reasonable recruitment.

For professional, managerial and any higher-skilled positions for which normal recruitment is regional or nationwide, corresponding data should be used.

**See Appendix B for basic sources of data for this information.

***Record figures for minorities separately by sex.

- the percentage of each minority group*and of females in the work force.
- the extent of unemployment for minorities*and females.
- the availability of minorities*and females with required skills.
- availability of promotable and transferrable females and minorities**in your own work force.
- institutions in the community capable of training people in needed skills.
- your own organization's capability for training to qualify minorities and women for all job classifications.

E. DEVELOP GOALS AND TIMETABLES

Any serious business program requires setting measurable goals and reasonable timetables for achieving them. Some actions to comply with the law can and should be taken immediately. Others will require different timetables, depending upon various factors in your organization and community.

Immediate action should be taken to assure that salaries and benefits are the same for all employees who perform substantially similar work, and that sex, race, religion or national origin is not a factor in placing employees in jobs with different pay levels or opportunities for advancement.

1. Setting Long-Range Goals

Long range goals and timetables will be needed to eliminate employment discrimination and effects of past discrimination. Your survey of present employment and analysis of underutilization and concentration by job category will provide the basic data for formulating such goals and timetables.

The ultimate long-range goal of your affirmative action program should be representation of each group identified as "underutilized" in each major job classification in reasonable relation to the overall labor force participation of such group. This goal may be modified to the

*Record figures for minorities separately by sex.

**See pp. 39-40, and 50-52 for suggestions on developing realistic job requirements, identifying qualified minorities and females and developing training opportunities.

extent that you can prove that valid job-related selection standards reduce the percentage of a particular group qualified for a particular job classification.*

Long-range goals should not be rigid and unchangable. They cannot be based upon exact predictable statistics. For example, studies indicate that many qualified women not in the present labor force could become "available" if job opportunities were open to them. Similarly, many members of minority groups now in the workforce could become "qualified" if better jobs and opportunities for training and promotion become open to them.

2. Setting Annual Intermediate Targets

Once long-range goals have been set for each underutilized group in each job category, specific, numerical annual targets should be developed for hiring, training, transferring and promoting, to reach these goals within the indicated time frame.

Annual targets will depend upon such factors as anticipated turnover, expansion or contraction, availability of persons with required skills, realistic appraisal of extent of skill necessary for particular jobs, time necessary to acquire such skill, possibility of on-the-job or other training to acquire skills, and similar considerations.

Managers of each department and organizational unit should participate in assessing these factors and setting annual targets (subject to review and revision by the Affirmative Action Manager) and should be held responsible for reaching them. Targets should be developed for the organization as a whole, for each unit and each job category.

Overall responsibility for goals should remain with the Program Manager. If few job openings and promotional opportunities are projected, and goals appear inadequate, other steps should be explored. Restructuring of some jobs into lower and higher-skilled components, and providing additional training opportunities are examples of ways in which goals may be improved.

A reporting, monitoring and evaluation system should be established to assure that there is measurable yearly

*Selection standards should meet requirements of EEOC Guidelines on Employee Selection. See Appendix D. See also pp. 35-46 for further discussion of selection standards.

improvement in hiring, training, transfer and promotion of each group in each area where underutilization has been identified.*

3. Identifying Causes of Underutilization

Some organizations feel that they have conducted a serious goal-setting process and made "good-faith" effort to achieve goals, but that negative external factors -- such as "unavailability of 'qualified' candidates" are responsible for lack of significant improvement.

EEOC experience indicates that it is far more likely that negative internal factors are responsible -- i.e.; continuing discriminatory barriers in the employment system.

Therefore, to achieve long-range goals and intermediate yearly targets, you must first identify where such barriers may be operating, and then take necessary steps to eliminate them, and to equalize opportunities for those suffering effects of past discrimination.

For example: your analysis may reveal underutilization of certain groups in certain jobs. Until you review your entire employment process, step by step, it will be difficult to pinpoint the cause of underutilization. How much is due to inadequate recruiting efforts? How much to failure of applicants to survive various standards and steps in your selection and promotion process? How valid is each of these standards in predicting which candidates can perform particular jobs successfully?

Potential areas of discrimination which require review and action include:

1. The Recruitment Process; Personnel Procedures.

2. Selection Standards and Procedures.

3. Upward Mobility system; Assignments, Job Progressions, Transfers, Promotions, Seniority, Training.

4. Wage and Salary Structure.

5. Benefits and Conditions of Employment.

6. Layoff, Recall, Termination, Disciplinary Action, Discharge.

7. Union Contract Provisions Affecting these Areas.

*See pages 23-24.

F. DEVELOP AND IMPLEMENT SPECIFIC PROGRAMS TO ELIMINATE DISCRIMINATORY BARRIERS AND ACHIEVE GOALS.

1. Recruitment.

a. First analyze and review recruitment procedures for each job category to identify and eliminate discriminatory barriers.

Example: Avoid recruitment primarily by "word of mouth" or "walk-ins". This tends to perpetuate the present composition of your workforce in various job categories. Where minorities and females are not well represented at all levels, reliance on such recruitment procedures has been ruled by the courts to be a "discriminatory practice." 1/

b. Establish objective measures to analyze and monitor the recruitment process.

- Develop an "Applicant Flow" Record,* indicating for each job applicant: name, race, national origin, sex, referral source, data of application and position applied for. This form should indicate whether job offer was or was not made, job applied for, job offered or reason why job offer was not made and identify the person(s) making the employment decision.

- This record should provide data for quarterly reports of minority and female applicants and interviews for each job opening and their percentage of total applicants and of total hires by job category.

- Retain records of minorities and females not hired, who interviewed them, who made decision not to hire and written reason for not hiring, in order to establish responsibility.

c. Select and train persons involved in the employment process to use objective standards and to support affirmative action goals. Everyone who recruits, interviews, selects, hires, places, promotes, trains or takes disciplinary and other personnel actions should be selected and/or trained to use objective, job-related standards** and to contribute to affirmative action goals. Interviewers are particularly

*See Appendix A for sample form.

**See Selection Standards and Procedures, p. 35.

important. However, the guard at the gate or the personnel receptionist also may hinder or help your program. They can discourage or encourage the people you are trying to hire.

It is impossible to eliminate subjective judgement; therefore, "Applicant Flow" and other monitoring records will help identify sources of continuing discrimination.

d. Institute affirmative programs to recruit for all jobs where underutilization has been identified.

- Maintain an Affirmative (Remedial) Action File of minority and female applicants not hired who are potential candidates for future openings; contact these candidates first when you have openings.

- Utilize minorities and females in recruitment and the entire personnel process. Qualified, committed and sensitive minorities and females in policy-level personnel positions are motivated peple who know how to find the people you are looking for. Also use minorities and females:

  - as interviewers and staff in your personnel department.

  - on recruitment visits to schools and colleges; as participants in "Career Days," "Youth Motivation" programs, Job Fairs and other community contacts.

  - in pictures in help-wanted and consumer ads in company brochures. Build an image that your company provides varied and non-traditional jobs with futures for all qualified applicants.

  - to contribute suggestions for affirmative recruitment.

  - as referral sources. If you really offer equal job and advancement opportunities, and your "credibility" is good, present minority and female employees will be an important recruitment source.

- Advertising

  - Place classified ads only under "Help Wanted" or "Help Wanted, Male-Female" listings. Inform

all publications that sex-segregated listings cannot legally be used unless sex is a bona-fide occupational qualification (BFOQ) for the jobs.* Be sure that the content of ads does not indicate any race, sex or age preference or qualification for the job.

- Advertise in media directed towards minorities and women; newspapers, magazines, "Soul" and Spanish language radio stations and other specially-oriented radio and TV programs. Use such media regularly; it takes time to get the message through.

- Where jobs traditionally have been typed as "male" or "female," emphasize interest in recruiting both sexes.

- All advertising should include the phrase "Equal Opportunity Employer, M/F." (To date, "EEO Employer" still suggests only racial non-discrimination.)

• Employment Agencies

- When placing job orders with all agencies, emphasize your policy of hiring applicants based on merit, and your interest in referrals of qualified minorities, male and females for all jobs.

- List jobs at all levels with the local State Employment Service. In many cities the Service has a special office for professional as well as clerical, technical, skilled and unskilled workers, and also acts as referral center for graduates of manpower training programs.

*BFOQ. For all practical purposes, almost all jobs must be open legally to men and women. The "bona-fide occupational qualification" (BFOQ) exception of Title VII is narrowly construed by EEOC and the courts. The burden of proof is on the employer to establish that the sexual characteristics of the employee are crucial to successful performance of the job (such as wet nurse) or that there is need for authenticity (such as a model, actor, or actress). Only when the essence of the business enterprise would be undermined by not hiring a member of one sex exclusively is a BFOQ justified.[27] BFOQ is also narrowly interpreted under the Age Discrimination in Employment Act, but some exemptions are specified.[37]

- Contact agencies and consultant firms that specialize in minority and female applicants.*

- Educational Institutions

  High Schools, Vocational Schools and Career Development Centers.

  - Estabish and maintain personal contact with counselors and principals of schools in your labor area, particularly schools with large minority enrollment. Tell them you are looking for minorities, males and females for non-traditional jobs; specify kinds of jobs, education and training needed. Urge them to encourage students to take courses to qualify for these jobs.

  - Investigate possibilities for part-time work-study programs and summer job programs which can provide motivated, qualified new employees.**

  - Work with school personnel to develop curriculum and training to equip students for jobs leading to good careers in your company. (Some companies have loaned personnel and equipment for such training on their own, or in cooperation with other firms.)

- Colleges

  - Schedule recruiting visits and/or write to colleges with large minority and female enrollments. Contact Alumni and Alumnae Associations.***

- Develop and Maintain Contact with Minority, Women's and Community Organizations.

  Don't rely on one-time contacts or placing a few job orders with one or two better-known organizations. Not all groups are immediate sources of

*EEOC's Office of Voluntary Programs and Regional Offices will help locate such agencies.

**The National Alliance of Businessmen has active programs in these areas. See Appendix C., p. 4. for address.

***See Appendix C for some suggested recruitment sources.

employees. Some have referral and training programs; others will help spread the word. The sources will differ in each community.*

Among national organizations with local units prepared to refer minorities (male and female) are:**

Commonwealth of Puerto Rico; G.I. Forum; League of United Latin American Citizens (LULAC); National Association for the Advancement of Colored People (NAACP); Opportunities Industrialization Center (OIC); Puerto Rican Research and Resources Center; National Urban League; Service, Employment Rehabilitation (SER).

Organizations ready to refer women with specific skills include:***

American Association of University Women; Federation of Business & Professional Women's Talent Bank; Intercollegiate Association of University Women; National Council of Negro Women; National Organization for Women (NOW); Negro sorities and service groups: (Delta Sigma Theta, Alpha Kappa Alpha, Zeta Phi Beta); Women's Equity Action League (WEAL); Professional Women's Caucus.

Community organizations representing Black, Spanish-Surnamed, Indian, Asian and other minority and women's groups are important sources in each locality. Contact minority and female media, churches, school committees and community centers to identify groups in your area.

Good informal referral sources include individual minority and female lawyers, ministers, doctors, centers of community life: barbers, beauticians, recreation and community improvement groups.

Make clear to all groups your interest in hiring minorities, women and men for non-traditional jobs.

- Public Training Programs

Existing training programs in your community may provide qualified applicants; special programs also

*Contact Regional EEOC Offices for information on groups in your area.

**See Appendix C for some suggested recruitment sources.

***See Appendix C for further information.

may be developed to provide training for your needs and to pay costs where needs for such training is valid. Programs and agencies vary in each community. Some sources to check:*

National Alliance of Businessmen; Regional Manpower Administration Offices, U.S. Department of Labor; State Employment Services; City and State Human Resources Departments or Office of the Mayor; Community Action and Model City Agencies; Apprenticeship Information Centers.

- Other Sources:

  - Returning veterans include many minorities with skills. Contact local Veterans Administration Office; military demobilization centers; State Employment Service.*

  - Local and State probation and parole departments and vocational rehabilitation centers have been used by many employers for successful recruitment and retention of minorities and women.

  - Many well-qualified minorities and females hold professional and management jobs in Federal and other government services; consider recruiting through contacts in these agencies.

  - Companies have found valuable new talent through hiring women as regular employees. They have found additional benefits in hiring women available on a part-time basis. Shorter work-days or work weeks, or two employees sharing one job are effective techniques. Recruit through regular sources or through agencies specializing in part-time jobs.***

*Regional EEOC Offices can help you locate these agencies. See Appendix C for additional information.

**Government contractors are required to list all job vacancies with their local state employment office and record which jobs are filled by veterans.

***EEOC's Office of Voluntary Programs and Regional Offices can help locate such agencies.

2. Selection Standards and Procedures

Experience under Title VII indicates that the selection process -- whether consciously or unconsciously -- is probably responsible for more discrimination than any other area of employment practices.

A careful review and evaluation of every step of this process is necessary to assure that job requirements, hiring standards and methods of selection and placement do not discriminate, but instead contribute toward affirmative action goals.

a. Job Related, Validated Standards

Many court decisions, culminating in the 1971 Supreme Court decision in Griggs v. Duke Power Co. 4/ have upheld the basic principles of EEOC's Employee Selection Guidelines* which prohibit any job qualifications or selection standards which disproportionately screen out individuals in groups protected by Title VII unless (1) they can be significantly related to job performance, and (2) no alternate nondiscriminatory standards can be developed to meet requirements shown to be justified by "business necessity".**

Employee selection procedures subject to these Guidelines include all tests (defined as "any paper and pencil performance measure used as a basis for any employment decision") and other requirements such as personal histories, biographical information, background requirements, specific educational or work experience requirements, interviews (scored or unscored), application forms (scored or unscored), and interviewer rating systems which result in a significantly differential rate of rejection for groups protected by Title VII.

Validation

The Guidelines and the Courts recognize that tests and other employee selection and assessment standards may

*See Appendix D for full text of Guidelines on Employee Selection Procedures. The same basic requirements are contained in the Order on Employee Testing and Other Selection Procedures issued by the Office of Federal Contract Compliance for Federal contractors.

**See p. 7 for definition of "business necessity."

be useful and proper methods to develop an efficient workforce, providing that they do not have discriminatory effect. If they do, the employer must show that alternate, suitable procedures are not available and that the selection devices in question have been validated as significant predictors of successful job performance for the particular job or jobs in question.

Validation is required only where existing selection procedures have a statistically significant adverse effect on groups protected by Title VII.

Validation is a very specific, technical and complex process, defined in detail in the EEOC Selection Guidelines.* Validation requires use of trained industrial psychologists, and a sufficient employee sample for each job category to be statistically significant. The Guidelines require, if feasible, criterion related validation. This is a technical term to describe a study which proves that those who score high on a particular test or selection standard generally turn out to be successful on the job, while those who score low usually turn out to be unsuccessful. Such a study requires a sizeable sample of applicants and employees, including representatives of groups who may be suffering adversely from such tests or standards.

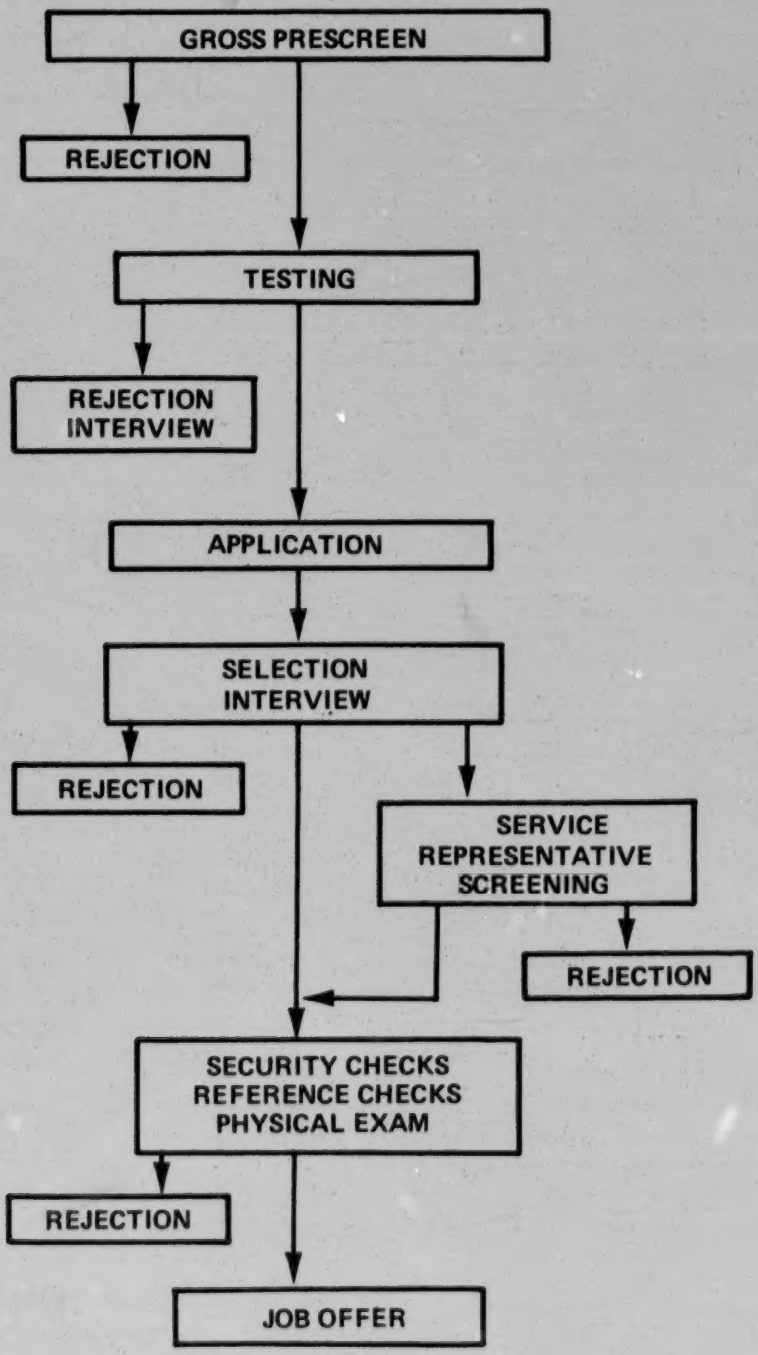
If such a study is not feasible, the Guidelines require evidence of content validity -- that is, that the test is an actual sample of the work to be done, or construct validity -- that the test or other standard measures some characteristic clearly needed for the particular job.

In either case, validity should be studied for each minority and sex group separately (if feasible) because the same test scores or performance may not predict the same level of job performance for various groups. Validity studies must be conducted by professionally trained psychologists, and all records kept for documentation.

Practically, EEOC Selection Guidelines require that you identify, analyze and monitor every step of your selection and assignment process including all procedures

*See Appendix D, Guidelines on Employee Selection Procedures, Sections 1607.4 - 1607.8. For assistance in developing validation studies, consult EEOC Office of Research, 2121 K St., N.W., Washington, D.C. 20506, and the American Psychological Association, 1200 - 17th N.W. Washington, D.C. 20036.

Employment Process



for initial hire, transfer, promotion, training or any employment opportunity, to discover if any step has adverse impact on groups protected by Title VII. This would be indicated by exclusion or rejection of a significantly higher proportion of such groups compared to others.

For example: the chart on page 37 diagrams various steps of the initial employment process of one company at which discriminatory factors might -- and in fact did -- operate.

In this company, applicants first undergo a "gross prescreen" by telephone or brief personal interview, in which an interviewer evaluates whether applicants' interest and experience fit job requirements. Interviewers attempt to discourage those deemed not suitable for jobs. Next, applicants undergo varied test batteries, based on the interviewer's evaluation of their particular interest and experience. Many are rejected at this stage.

Those passing the tests (a major barrier) fill out a detailed application form, with questions which may disqualify additional applicants. Those surving these processes are interviewed in-depth. On the basis of test result and in-depth interview, the interviewer decides if the applicant is qualified for a specific job opening or should be rejected. If qualified, applicants still must pass a security check, a reference check and physical exam before hire.

Finally, the interviewer makes a job placement decision which may control the new employee's opportunity for future advancement.

To discover whether any or all of these selection procedures have an adverse effect on a racial, ethnic or sex group requires monitoring each step through forms similar to the Applicant Flow Record.*

If a significantly different rejection rate is found at any step, analyze the cause. It may be bias on the part of those applying the procedure, use of such procedure only for certain groups, or the way in which a seemingly neutral procedure affects a "protected" group.

*See p. 29. See also pages 45-48 & 55-56 for suggestions of other monitoring forms.

- Conduct job analyses to identify actual tasks performed, their frequency, and importance of specific employee traits or skills needed for the job.

- Be sure that job descriptions and hiring standards reflect major job functions identified and do not require higher qualifications.*

- If selection procedures still produce adverse rejection rates on protected groups, consider whether each remaining standard or practice really is necessary to the safe and efficient operation of your business, and what other procedures might be used to achieve the same objective without discriminatory effect.

  Only if such actions fail to eliminate the discriminatory impact of selection procedures are you required to undertake the extensive work and cost of professional validation.

  One official described his company's actions after reading the Griggs decision:

  > "Our line managers have been working very closely with our personnel people . . . we have been walking through our entire employee selection process to see what really makes sense and what merely gets in the way of providing equal employment opportunities. . . . . We have found that there really was no good reason for many of the practices we have been following . . . . Like the courts, our basic assumption is that all groups protected by Title VII ought to be moving into all our jobs at all levels on an approximately proportional basis. There must be a darned good reason grounded in business necessity when they are not. Otherwise we must find ways to make it happen"[5]

*EEOC Selection Guidelines specify that only when there is a high probability that employees will in fact attain a higher level job within a reasonable period of time, will a selection standard geared to evaluate applicants for future promotability be recognized as a relevant criterion for validating such procedure.

Another important selection guideline upheld by the Supreme Court in the Griggs decision, is that employees in an "affected class,"* in order to achieve their "rightful place," cannot be required to meet any present selection standards for transfer and promotion not formerly required for other employees who are now performing jobs satisfactorily.

Specific selection procedures requiring review, revision and affirmative action include:

b. Application Forms and Pre-Employment Inquiries.

EEOC and the courts have found that many common pre-employment inquiries disproportionately reject minorities and females and usually are not job related.

Some of these questions have been explicitly prohibited by courts where they have been shown to have discriminatory effect; the exact legal status of other questions is still to be determined.

Use these pragmatic guidelines: "Does this question tend to have a disproportionate effect in screening out minorities and females?" "Is this information necessary to judge this individual's competence for performance of this particular job?" "Are there alternate, non-discriminatory ways to secure necessary information?"

Major questions which should be eliminated from pre-employment inquiries (application forms and interviews) or carefully reviewed to assure that their use is job related and non-discriminatory in effect, include:

- Race, National Origin, Religion. Pre-employment inquiries about race, color, religion or national origin, do not constitute per-se violations of Title VII,** but such inquiries or recording such information in personnel files will be examined very carefully should discrimination charges arise.

*See p. 8 for definition.

**A number of state laws explicitly prohibit such inquiries; however neither these laws nor Title VII prevent the employer from recording such information, under proper safeguards, for affirmative action purposes. See p. 60 for further discussion of this use.

The burden of proof is on you, the employer to show that use of such information is non-discriminatory and job-related.*

- Education. The courts have found non-job-related educational requirements which have disparate effect on protected groups a major area of illegal discrimination.

  The Supreme Court explicitly has affirmed EEOC Guidelines prohibiting requirement of a high-school education as a condition of employment or promotion where this requirement disqualifies minorities at a substantially higher rate than others and there is no evidence that it is a significant predictor of job performance. 6/

  To evaluate "disparate impact," check educational attainment levels of minority and other groups in your recruitment area in U.S. Census data,** and review your own employment history for evidence of adverse rejection rates.

  Inflated educational requirements can also cost loss of good potential workers and cause high turnover of "overqualified" employees.

  Eliminate requirements for high school or higher diploma if not needed for specific job in question. (If higher education is required for advancement, applicant may complete this after employment).

  Be sure that English-language requirements do not bar employment of people with little or no English if this is not an important job requirement. (English-language classes also may be arranged with or without employer assistance, after employment).

- Arrest and Conviction Records. An individual's arrest record has been ruled by the courts to be an unlawful basis for refusal to employ, unless a "business necessity" for such policy can be established. An arrest is not indication of guilt, and courts have found that where minorities are subject to disproportionately higher arrest rates than whites, refusal to hire on this basis has a disproportionate effect on minority employment opportunity. 7/

*See Appendix A. p. 1.

**See Appendix B.

A Federal court has also ruled that conviction of a felony or misdemeanor should not, by itself, constitute an absolute bar to employment, and that the employer should give fair consideration to the relationship between the nature of the act resulting in conviction and the applicant's fitness for the job in question.[8]

The law is still developing in this area, but these decisions indicate that where there is a "disparate effect," there must be strong evidence of "job relatedness" and "business necessity" to justify such inquiries for selection purposes.

- Credit Rating. A negative employment decision based on an applicant's poor credit rating has also been found unlawful, where credit policies have disproportionate negative effect on minorities and the employer cannot show "business necessity" for such rejection.[9]

  Inquiries about charge accounts, home or car ownership (unless the latter is required for the job) have been found to have adverse affect on minorities and may be unlawful unless required by "business necessity."[10]

- Sex, Marital and Family Status. Whether a candidate is male or female, married or single, and number and age of children are examples of questions frequently used to discriminate against women which rarely relate to capacity for job performance.*

  Any such question which directly or indirectly suggests or results in limitation of job opportunity in any way is unlawful.

  An employer may believe that married women with young children are more prone to absenteeism or turnover, but actual studies show that in total employment there is little difference in absentee rates of men and women.

  Turnover is more related to type of job and pay level than sex or family status. Investigation of an applicant's previous work record is usually a more valid method of evaluating employee stability.

*Information needed for Social Security and tax records may be obtained after employment.

It is a violation of the law for employers to require pre-employment information on child-care arrangements from female applicants only. The Supreme Court has ruled that an employer must not have different hiring policies for men and women with pre-school children.[11]

- Physical Requirements. Application questions and hiring standards related to height, weight and other physical requirements should be retained only where necessary for performance of a particular job. Court and EEOC decisions have found that height and weight requirements violate the law where they screen out a disproportionate number of Spanish-surnamed persons, Asian-Americans or women, and the employer cannot show that these standards are reasonably related to job requirements.[12]

- Experience requirements. Such requirements should be reviewed and re-evaluated to assure necessity for specific jobs. Requirements should be eliminated where jobs can be quickly learned or reduced if necessary for job needs.

- Other Potential Areas of Discrimination. A number of other questions frequently found on application forms or used in pre-employment interviews may have discriminatory effect and should be carefully reviewed for job-relatedness and business necessity. Some examples:

- Age: Date of Birth. Such questions may be used to violate the Age Discrimination in Employment Act.

- Availability for Saturday or Sunday Work. It may be necessary for an employer to have this information, but Title VII requires that employers make reasonable accomodation for "an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employers' business". If such questions are asked, it is desirable to indicate that reasonable effort will be made to accomodate employee religious needs.

- Friends or Relatives Working for the Company. This question may reflect a preference for friends and relatives of present employees, and would be unlawful if it has the effect of reducing employment opportunity for women or minorities. (It would

have such effect if present workforce composition differs significantly from proportion of women or minorities in the relevant population area). Such a question may also reflect a rule that only one partner in a marriage may work for the employer. There is growing recognition that such rules have a disproportionate, discriminatory effect on employment of women, and that they serve no necessary business purpose.

- Appearance. Employment decisions (hiring, promotion, discharge) based on factors such as length or style of hair, dress and other aspects of appearance have been found to violate the law if they disproportionately affect employment on the basis of race, national origin or sex. Some courts have ruled it illegal to refuse to hire or to discharge males with long hair where similar restrictions are not imposed on females. Hairstyle requirements also may be racially discriminatory. 13/

c. Testing

As emphasized at the start of this section* any test which adversely affects the employment status of groups protected by Title VII must be professionally validated as an effective, significant predictor of effective job performance.

In many cases, the use of intelligence, aptitude and other tests developed to provide "objective" evaluation of applicants has had major disproportionate effect in rejection of minorities, without having any proven relation to predicting successful job performance.

Testing, therefore, is a major area for immediate review and action. If you believe it necessary to continue use of present tests, you should proceed immediately to validate them in accordance with EEOC Guidelines' specific requirements for documented validation.**

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*See pp. 35-38.

**See Appendix D. EEOC Guidelines on Employee Selection Procedures. Section: 1607.5 - 1607.13.

Some alternatives to extensive professional test validation have already been suggested.*

Pending validation of tests and other selection standards, you may decide, as some firms have -- without any ill effects -- to eliminate those which screen out a disproportionate number of minority and female applicants.

If you believe it is essential to retain certain tests as selection devices for hire or promotion, consider compensating for adverse impact by methods which permit a reasonable proportionate percentage of individuals from protected groups to pass them.

- Use test scores as only one of several criteria to evaluate for selection.

- As substitutes for tests, or supplements to validated tests, consider more substantive interviews, and use of probationary periods to provide evaluation of ability based on performance.

d. Interviews. Biased and subjective judgements in personnel interviews can be a major source of discrimination. Interviews and interviewers' actions should be carefully monitored. However, good interviews, conducted by persons sensitive to affirmative action goals also may be useful tools in assessing candidates' real aptitudes and potential. Interviewers should be free of stereotypes about minorities' or females' capabilities or suitability for particular jobs. Interviewers should be trained to evaluate each candidate's individual ability and potential, and to know actual job requirements, based on realistic job descriptions.*

e. Rating of Selection Standards

Review any system of rating or "weighting" certain items in application forms, tests, or interviews which may have a disparate effect on minorities or females. Often such systems do discriminate against these groups.

f. Monitoring the Selection Process

Each step of the selection process described in the preceding pages should be reviewed and monitored on

*See pp. 38-39.

an ongoing basis. Reporting forms or other procedures should be developed to identify and analyze barriers to affirmative action.

At least these key steps should be monitored with records indicating the effect of each activity by race, national origin and sex.

- Recruitment sources
- Application forms and pre-employment inquiries
- Job descriptions (for job-relatedness)
- Tests (for disparate impact; request average test scores for each group) (validated for job relateness)
- Interview procedures and results
- Physical examination
- Reference and security checks
- Job assignment

3. Upward Mobility System: Assignment, Job Progression; Promotions; Transfer; Seniority; Training.

To improve minority, female and male employment in all jobs in which they are underrepresented, review all practices -- both formal and informal -- affecting assignment, transfers, promotion and training for jobs at all levels, management and non-management.

First: identify the barriers.

a. What are present systems or practices affecting transfer and promotion? Which are formal? Which are informal? Who makes decisions?

Identify operations of different systems for those employees covered by collective bargaining agreements and those who are not.

b. Identify requirements and procedures for transfer and promotion. If they have a disparate effect on a protected group, or lock out an "affected class,"* they

*See p. 8 for definition of an "affected class."

should be changed or validated for the specific jobs involved unless required by "business necessity."

c. To what extent are supervisors' evaluations and recommendations a (or the) major factor in transfer and promotion? Do they meet requirements of EEOC Selection Guidelines?

d. Do requirements for selecting apprentices and special bidding privileges for incumbent workers have disparate effect on minorities and females or tend to lock out members of an "affected class?" Have such requirements been validated for "business necessity" and job-relatedness?

e. Affirmative Action Records to Monitor Upward Mobility*

These records are needed to identify existing barriers and determine needed affirmative action for upward mobility:

- Promotion, transfer and termination rates for each minority group and for females, by job category, compared to other employees.

- Number and percentage of each minority group and of females in apprenticeship and all training programs.

- Charts showing formal lines of progression. From these records, and from your initial Survey of Current Employees** prepare these analyses:

  - Identify jobs held by minorities and females in terms of job progression and opportunities for upward mobility compared to other employees.

  - Be sure your analysis includes both union and non-union (exempt) jobs. Under Title VII, there is no meaningful distinction between jobs covered or not covered by a bargaining agreement, in terms of equal employment opportunity. Therefore, if "exempt" employees previously have not had opportunity for employment in union jobs, (or vice-versa) such opportunities should be created, publicized,

*See Appendix A for sample forms.

**See p. 23.

and employees enabled to compete for such jobs on the basis of their company seniority, regardless of any contrary provisions in the bargaining agreement.*

- Compare rate of minorities and females who are referred for promotion but not promoted to that of other employees.

- Identify seniority and other factors which operate as barriers to upward mobility for minorities and females.*

- Determine if present requirements for work experience in entry jobs are necessary to perform the next job in formal lines of progression or merely convenient means of qualification for promotion. Determine how much time is really needed to gain work experience for promotion.

Then develop affirmative programs to overcome identified barriers.

If your analysis shows marked disproportion for minorities and females in jobs at higher levels, in better job progressions, in lateral and vertical movement into these jobs, higher rejection rate of those recommended for promotion and if you have identified the existence of an "affected class", take these remedial affirmative actions:

a. Be sure that all selection standards and procedures for promotion, transfer and training conform to EEOC Selection Guidelines and, if they have disparate effect on protected groups, that they have been properly validated.**

b. Be sure that procedures for selecting candidates for promotion, transfer and training are based upon fair assessment of an employee's ability and work record.

*See pp. 57-59 for further discussion of issues affecting the union and the bargaining agreement. Where the courts have found an "affected class" of employees who are, or in the past have been, barred from certain desirable job progressions or work areas, they have required special affirmative actions to enable such employees to enter formerly closed areas under conditions (i.e., at higher entry and pay levels) which would have prevailed had discrimination not existed.

**See pp. 35-37.

c. Target members of any identified "affected class" for priority remedial action in transfer, promotion and relevant compensatory benefits and pay. Courts have ruled that in order for "affected class" members to be restored to their "rightful place," they should be able to compete for all jobs using basic (minimum) qualifications which meet EEOC Selection Guidelines, on the basis of their company seniority, and that they should have preference over persons hired from outside. Courts have also ruled that employers may be liable for providing backpay and other benefits such employees would have enjoyed had not discrimination existed. When "affected class" employees are offered transfers to areas with better upward mobility opportunities, courts have ruled that the newly transferred employees should not lose their accrued company seniority and other benefits. Loss of seniority and other rights effectively discourages employees from moving to areas with better advancement opportunities.*

Courts also have held that transfer with loss of benefits -- or loss of pay -- is discriminary if hiring, transfer or promotion practices previously barred opportunity to qualify for such transfer.[15]

Courts have ruled that when "affected class" employees transfer to previously closed job areas where they must start below their current pay level, their wages or salaries should be "red circled" -- kept at current level -- until they reach this level in the new job.[16]

If any of the above steps conflict with existing contract provisions, get together with your union and make needed revisions to comply with the law.**

d. Adopt a company-wide merit promotion plan; post and otherwise publicize all job promotional opportunities (union and non-union) and encourage employees to bid on them, particularly employees who traditionally have not had access to better jobs.***

A good merit promotion system is good business. It not only benefits those who have been locked out, but increases general employee morale and productivity and decreases turnover.

*See Seniority p. 58.

**See Revision of Union Contract, p. 57.

***See suggestions for Counseling, p. 50.

e. Require supervisors to include a specified percentage of minorities and females among those promoted, consistent with your annual affirmative action goals for such jobs.

Require supervisors to submit a written justification when apparently qualified employees are passed over for upgrading or promotion.

f. Make clear to employees and supervisors that women and minorities are eligible for promotion to any job, on the basis of individual qualifications, regardless of whether such jobs have traditionally been held by one sex or race.

g. Develop a formal employee evaluation program, based on objective, measureable factors. Eliminate subjective elements that may be operating against minorities and females in conformance with EEOC Selection Guidelines.

h. Identify minorities and females qualified for upward mobility.

- Review records of all employees and analyze comparative qualifications such as education, work experience, seniority, performance records, and other factors that may indicate people working at jobs below their ability.

- Interview employees to further assess their potential and get additional information on their background and career interests.

- Compare job performance, length of service and other factors affecting salaries and promotion rates of minority and female employees with qualifications of other employees who have been promoted.

i. If your workforce analysis shows underutilization in certain job classifications, set up a Remedial Action File of minority and female employees qualified for promotion. Use this file first when promotional openings occur in job classifications where underutilization has been identified, before hiring from outside.

j. Establish a career counseling program, to encourage employees in dead-end jobs to qualify for better jobs. Some may be hesitant to take on additional responsibility or training because they doubt that real opportunities exist, or because their experience, and absence

of role models in better jobs has discouraged aspiration and "conditioned" them to think that they must stay in low-level position.

k. Provide training at the job site through cooperation with local adult education system or manpower training programs, or at educational institutions, business schools, and manpower training centers.

l. Set specific numerical or percentage goals -- consis- with your overall affirmative action goals -- for participation of minorities and females in all company sponsored training: apprenticeship, on-the-job; professional, and particularly, management training. Management training should be a high priority in view of the very small number of present minority and female managers. Encourage minorities and females to participate in company tuition-aid programs.

m. Some New Approaches to Upward Mobility

Women and minorities currently in your work force are often a major undeveloped resource for administrative, technical, managerial and professional jobs. Many now work at levels far below their training; others perform higher level work under low-paid titles. For example: a 1970 survey showed that 19% of women with college degrees and another 17% with some college training were working in clerical, semi-clerical and unskilled jobs.

Regardless of educational level, the secretary "you can't do without" undoubtedly has administrative abilities which are not being fully used or adequately compensated.

Consider reducing the gap and increasing the steps between present low-skill and higher-skill jobs. Job restructuring -- separating out less-skilled functions -- or creating new assistant positions to higher-skilled employees are among ways to offer promotional opportunities and training to minorities and women not yet qualified for the next level job.

If present training programs are too advanced for some minorities and females, develop new programs to help those who have not had opportunity to acquire on-the-job experience to qualify and compete for promotions.

Consider starting facilities -- on your own, or in cooperation with other employers -- to provide day-care during working hours. Studies tend to show that

companies providing such care for children of all (not just female) employees have had lower absenteeism and turnover. Female workers who know they have good child-care facilities are better long-term investments for training and job performance at higher levels.

4. Wage and Salary Structure:

A careful review to assure non-discrimination in compensation, benefits and conditions of employment may require significant changes in present practices.

Compare job descriptions and actual functions of jobs held by men and women of all racial groups, length of service and other factors affecting pay rates.

The Equal Pay Act* requires that equal wages be paid for substantially similar work performed by men and women. Title VII requires equal pay regardless of race, national origin, religion or sex. Equal pay is required for jobs of equal skill, effort and responsibility. This means the same base pay, opportunity for overtime, raises, bonuses, commission, etc.

Title VII is concerned not only with discrimination where men and women in similar jobs receive different pay, but also with the more subtle kind of discrimination where a wage rate is discriminatorily depressed because only women or minorities traditionally have been employed in a job classification.

Many costly court-ordered back pay awards have involved wage discrimination on the basis of sex. You should assure that all jobs are open to all applicants and that pay and benefits are equal for similar jobs.

5. Benefits and Conditions of Employment

Review all benefits and conditions of employment to see that they are equally available without discrimination, to all employees - male and female. This includes medical, hospital, accident and life insurance; retirement benefits; pension, profit-sharing and bonus plans; leave, and other terms, conditions and privileges of employment.

*For further information on the Equal Pay Act contact: Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

Be sure that facilities and benefits in such areas as recreation, health, lunchrooms, restrooms, etc. are open and available to all employees on an equal basis.

a. Fringe Benefits

Assure that:

- Males and females are eligible for retirement and pensions on the same basis, including equal retirement age and equal benefits.
- Benefits are not conditioned on the basis that the employee is "head of the household" or "principal wage earner" (such a condition is not job-related and tends to discriminate unduly against females.)
- Benefits for husbands and families of female employees are the same as those available to wives and families of male employees.
- Benefits available to wives of male employees are available to female employees.

b. State "Protective" Laws.

Many states have laws or regulations developed under an earlier concept of "protecting" women from hard and dangerous work, or providing special working conditions for them. In practice, most of these laws have limited employment and financial opportunity for women, without taking into account their individual capacities, preferences and abilities, and in some cases these laws have also discriminated against men.

Some employers have been uncertain about possible conflict of responsibilities under state and Federal laws.

EEOC Guidelines, court decisions and opinions of State Attorneys General have clearly established that equal employment requirements of Title VII supersede state "protective" laws limiting the occupations, hours or weights which may be lifted by women.17/

- Consider the individual's capacity for job. Do not refuse to hire, transfer or promote women because of state laws prohibiting female employment in certain occupations, in jobs requiring

lifting of specified weights, requirements that women can work only during specified hours or for specified numbers of hours per day or week. Discrimination on such basis violates Title VII.

- Minimum or wage premium pay requirements for overtime for women under state laws should be equally applicable to men. Benefits such as special rest and meal periods or physical facilities for women should generally be provided for men. If an employer can prove that "business necessity" prevents provision of these benefits for all, he cannot lawfully provide them for women only.[18]

- State laws which discriminate on the basis of sex with regard to employment of minors are superseded by Title VII. Boys and girls must have equal opportunity for employment in all jobs at the same age level.

c. Pregnancy and Maternity:

- Any written or unwritten policy which excludes applicants or employees from jobs because of pregnancy, or requires them to stop work at a specified time period violates Title VII and should be rescinded, unless the employer can prove "business necessity" for such policy.[19]

- The time when a pregnant woman should cease or return to work must be determined on an individual basis, and depends on the physical condition of the particular woman and the nature of her job.[20]

- EEOC Guidelines* provide that pregnancy, miscarriages, abortion, childbirth and recovery therefrom are, for job-related purposes, "temporary disabilities" for the period in which an employee cannot or should not (on medical advice) perform her job. These conditions should be treated as "temporary disabilities" under any health insurance or sick leave plan available for such purposes. Written or unwritten policies and practices on such matters as the start and duration of leave, accrual of seniority, reinstatement, payment, or extension of leave, should apply to

*See Appendix D. EEOC Guidelines on Discrimination Because of Sex, Section 1604.10.

pregnant employees on the same basis as to other employees physically unable to work.

- Requests for "maternity leave" beyond the medically certified period of "temporary disability" should be treated in the same manner as employee requests for extended leave, sabbaticals and other personal leave. Many companies allow special leave without pay for valued employees; extending similar provisions for maternity leave will greatly improve your ability to retain qualified female workers.

6. Layoff, Recall, Discharge, Demotion, Disciplinary Action.

The standards for deciding when a person shall be terminated, demoted or disciplined, laid off or recalled should be the same for all employees, not applied differently for minorities or females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups.

- For example, courts have found a company rule calling for discharge of an employee whose wages are garnisheed to be racially discriminatory because of its disparate effect on minorities and failure of the company to justify the rule on the basis of "business necessity."[21/]

- When a female or minority employee hired as part of an Affirmative Action Program is disciplined, laid-off, discharged or downgraded, it is advisable that the action be reviewed by the Affirmative Action Officer before it becomes final.

- Termination, demotion or any form of punishment or harassment against an employee because of filing a Title VII discrimination charge is illegal. Such actions receive priority EEOC compliance action, with reinstatement and backpay required.

Records to Monitor Layoff, Demotion, Terminations*

The following records should be kept to monitor this area of your program:

- All terminations: indicating total, name, date, number of males and females in each appropriate minority group by job category and reason for termination (see below).

*See Appendix A for sample forms.

- All Layoffs and demotions: indicating total, name, date, number of males and females in each minority group by job category, reason for action and recall rights.

- Exit interviews should be conducted with all employees who quit. Often, lack of training and actual or perceived discriminatory treatment are major causes of costly turnover. Information from exit interviews can provide important information on discriminatory policies and practices that cost you money and should be revised.

Sustaining an affirmative action program during a period of employment contraction may present special problems.

The most difficult problems involve a situation of layoff or termination where your organization has an identified "affected class," such as persons under a seniority system which perpetuates a discriminatory effect of past discriminatory practices. Such persons are entitled to the rights that they would have enjoyed had the previous discrimination not existed.

If minorities or females in the past were excluded from certain job areas or lines of progression (LOP), and have only recently entered these areas, they will, of course, have least LOP or job seniority and be the first to be laid off or terminated if such seniority is the normal basis for these actions.

Seniority systems which perpetuate the effect of past discrimination have been required by the courts to be modified and amended.*

Where minorities or females previously could not enter certain job categories and therefore acquire job or departmental seniority, courts have held that total company seniority for layoff and recall purposes must be retained. 22/

Alternatives to layoff should be explored. Can newly hired (or promoted) females or minorities be transferred to other areas in the company that are not suffering cutbacks? Can a special training program be developed with Federal funding to prepare such employees for more skilled jobs where vacancies are forseen at a future date?

*See Seniority, pp. 58-59, also pp. 48-49.

Some companies have used a shortened work week or work day as a means of avoiding layoffs. Others have designated minority or female employees as "critical talent," protected from normal layoff progressions because of the company's affirmative action effort to overcome former exclusion or discrimination against such persons.

If it becomes necessary to lay-off employees who were hired under an affirmative action program, try to provide counseling on unemployment benefits; realistic appraisal of their being called back to work and, where necessary, advice on other job possibilities. This will help sustain your credibility with many who are convinced that they will always be "last hired, first fired."

7. Revision of Union Contract:

Both employer and unions are responsible for non-discrimination under Title VII. An employer may not blame his failure to take affirmative action on barriers in the union contract or threat of a suit if such action is taken. Courts have held that this is not a justifiable "business necessity." 23/

Union and employer must assure that the contract provides equal opportunity.

If your self-audit of employment practices finds discriminatory barriers in the collective bargaining agreement, you should notify the union of sections which must be changed. Some unions have already requested changes to advance their minority and female members; others may be resistant. Legally, the union is obligated to revise any provisions which have a discriminatory effect regardless of membership preference. If the union is unwilling to negotiate such changes, you should make them unilaterally. Such unilateral action to comply with Title VII does not violate the "good faith bargaining" provisions of the National Labor Relations Act. 24/

Every collective bargaining agreement should include a non-discrimination clause covering all procedures of the agreement. But in many cases further specific affirmative changes are needed. The contract should be carefully reviewed and revised wherever current provisions are identified as barriers to equal employment.*

*See pp. 29, 46-52, 53-57, for identification of some of the areas which may need revision.

Some key areas of attention:

a. Membership in the union must be open without discrimination. There should be no segregation by race, national origin, sex or other classification, in separate locals or bargaining units.

b. Referrals by the union must likewise be made without discrimination for all jobs. Where courts have found discriminatory referral systems, they have ordered preferential referrals and continued referrals of specified numerical ratios of racial minorities and females, until there is a reasonable relation of employees in specific job categories to their population or workforce representation. 25/

c. Seniority is a major area where substantive and difficult changes must be made to wipe out effects of years of discrimination. The courts have firmly established that seniority systems which perpetuate a discriminatory effect on formerly excluded or segregated classes must be changed, even if there is no present discriminatory intent or practice.*

In general, the courts have ordered action to restore those who have suffered discrimination their "rightful place," i.e., seniority rights they would have enjoyed had no prior discrimination existed. 26/

Some guides to affirmative action:

- Previously segregated lines of progression (by race or sex) must be merged or changed so that minority and female employees have present promotional opportunities equivalent to those available to other employees during the period when discrimination existed.

- Where minority and female employees were formerly barred from certain job areas, they should be able to use their full company seniority for promotion and layoff purposes, and be promoted to their "rightful place" as rapidly as vacancies occur.

- When vacancies occur in newly "merged" lines of progression, minority and female employees should be considered for promotions above the entering steps, unless work experience on the

*See previous discussion pp. 46-49, 56-57.

first step is a validated functional prerequisite for performance at the higher level.

- Where a higher job does require valid work experience, and a form of occupational seniority controls access, the actual length of service or a "minimum residency" requirement to learn that job should be determined. "Affected class" employees should have access to such jobs based on their company seniority, modified by the "minimum residency" requirement to learn the job.

d. Maternity Leave, Other Benefits and Apprenticeship are among other major areas where contract revisions may be needed.*

G. ESTABLISH INTERNAL AUDIT AND REPORTING SYSTEM TO MONITOR AND EVALUATE PROGRESS IN EACH ASPECT OF THE PROGRAM

An internal reporting system to continually audit, monitor and evaluate progress in essential for a successful Affirmative Action Program. Designing and implementing this system is a key responsibility of the Affirmative Action Manager.

Much of the basic data required, and suggested formats have already been outlined under appropriate headings: Survey of Present Employment, The Selection Process, Upward Mobility and Terminations and Layoffs.** Such reports should be maintained on a current basis in each department.

Quarterly reports, based on these data should be provided by every manager and supervisor to the Affirmative Action Program Manager, so that he or she may evaluate progress, see how the program is working, and where improvement is needed. In summary, the following reports should be available (and are required for government contractors by Revised Order No. 4)

- Survey of current employment by race, national origin, sex, job classification, salary or wage level.
- Analysis of internal and external workforce availability by race, national origin and sex.
- Identification of areas of underutilization and concentration, and establishment of hiring and promotion goals and timetables.

*See pp. 53-55.
**See pp. 23, 24 A-C, 29, 45-48, 55-56. Also see Appendix A for sample forms.

- Records on applicant flow and each step of the selection process; hires, placements, promotions, requests for transfers, transfers and training program participation by race, national origin and sex.*

- Sources of referrals and hires, by race, national origin sex.*

- Resignations, layoffs and dismissals by race, national origin and sex.*

- Progress of company and sub-units toward goals.

All records should indicate the person responsible, and basis and reason for action taken.

Race and Sex Identification for Affirmative Action Purposes

Employers have been warned** that application forms and other personnel records indicating race, national origin and sex often have been used to discriminate. Some state laws prohibit such information on pre-employment forms. Many employers, accordingly, have eliminated this information from all personnel records, and then found problems in gathering and recording information needed for affirmative action purposes.

How to assure affirmative use of potentially discriminatory identification is best determined by the nature of your organization and the strength of your own affirmative action program.

Since there is considerable evidence that those making personnel decisions have used racial and sex identification in a discriminatory manner, it is advisable to keep such information separate from individual personnel files. Information for measurement and reporting may be coded and incorporated in payroll records; generally it should be kept separately from individual personnel files and used only for the affirmative action program. Use of special "Remedial Action" files also has been suggested.***

However, if your organization's commitment to affirmative action has been communicated effectively to all those making personnel decisions, and race, sex, and national origin identification in personnel files clearly is being used for the purpose of implementing identified goals, such use is not unlawful and may be desirable.

*These records should be kept separately for each job classification.
**See pages 40-41.
***See pages 30 and 50 .

The determining factor -- for both employer and potential compliance investigator -- is the effect of record-keeping. If employment of minorities and females is increasing in those areas where they have been excluded or underutilized, an affirmative action purpose may be documented; if discriminatory patterns remain, there is a presumption that race and sex identification in personnel files may contribute to this situation.

Quarterly reports should be reviewed and evaluated by the Affirmative Action Manager and discussed with department managers with recommendations for improvement, where needed, to meet annual goals. Top management should be informed, on a quarterly or semi-annual basis, of progress within the program, with recommendations to improve unsatisfactory performance in any area where needed.

Reporting, auditing and evaluation of this program should be conducted in the same manner as your company handles progress reports on other business goals, and necessary corrective action taken where needed.

H. DEVELOP SUPPORTIVE COMPANY AND COMMUNITY PROGRAMS

1. Training for Supervisors

The value of such training to communicate legal responsibilities and company commitment to supervisors and managers has already been suggested.*

However, unless each supervisor first gets a clear message from the top "boss" that specific affirmative action goals are part of his or her job responsibility and personnel evaluation, "awareness" or "attitudinal" training may not be very helpful. Once the message has been received, such training is an important means of reaching and involving every supervisor in the program. Well-developed training can provide positive responses to potential hostility, misunderstanding and resentment. Training should also communicate legal rulings, individual responsibility, detailed requirements of the program and provide specific help to meet problems that will arise.

2. Support Services

Additional "support services" may be helpful in recruiting and retaining minority and female employees, and may also provide measurable cost-benefits in reducing turnover and absenteeism among all employees.

*See pages 20-21.

a. Personal Counseling: The need for job and career counseling to inform all employees of advancement opportunities and needed training to qualify has been indicated earlier.* Many family and personal problems such as finances, credit, legal problems, child-care, housing and transportation, significantly affect the work performance and stability of employees. Personal counseling and referral to appropriate public and private community resources have proven very valuable in improving employee retention and attendance.

b. Transportation. If lack of public transportation makes it difficult for some minority and female employees to reach your work-site, consider providing assistance. Some employers have worked with public transit systems to establish new routes; others have subsidized transportation in whole or in part, helped organize carpools or provided pay advances or loans so that new employees could purchase cars.

c. Day Care. The importance of good day care facilities in attracting and retaining capable female employees, and reducing turnover and absenteeism has already been stressed.** Of nearly 33 million women working in 1972, 12.7 million had children under 18, and 4.4 million had children under age 6. Investigate possibilities for starting a day care center, or joining with other companies to do so. Federal funding is possible under Title IV(a) of the Social Security Act. Some companies donate funds to pay for care of employees' children in community centers; others provide counseling and help in finding suitable care.***

d. Housing. Many companies have moved away from the areas where most minorities live. Employment opportunities are often in areas where racial or economic restrictions prevent minorities and lower-paid employees from living within reasonable distance.

Consider working, as some companies already are doing, to get more housing in your labor area that is racially

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*See p. 50 .

**See page 51 .

***For further information on industry and day-care and funding sources, contact Women's Bureau, U.S. Department of Labor, Washington, D.C. 20210. Also write: Child Development Council of America, 1401 K St., N.W., Washington, D.C., for Resources for Day Care, a listing of publications on this subject.

open and within the financial means of lower-paid employees. Without such housing, it will continue to be difficult to provide equal employment opportunity for many.

3. Job-Related Education. Broadening the pool of qualified minority and female applicants through contact with educational institutions has already been suggested as part of the recruitment process.*

A great deal more needs to be done to improve the relevance of school curriculum to job opportunities, to strengthen career guidance and to prepare minorities and females for better job opportunities. Educational institutions are increasingly receptive to active cooperation with local business firms.

Employers may also:

- Employ secondary school students in part-time work-study and summer employment programs.**
- Employ college students under Cooperative Education programs which provide alternate periods of academic work and employment. Junior and Senior colleges may receive Federal Funds to develop such programs with employers.***

4. Cooperation with Job-Related Community Programs

Key members of management should participate in programs of the local National Alliance of Businessmen, Urban Coalition, Community Relations Boards, Merit Employment Councils and similar organizations working on jobs, education, training and housing opportunities.

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*See pp. 32-33.

**For information on funding for vocational education and work-study programs write: Division of Vocational and Technical Education, Bureau of Adult, Vocational and Technical Education, Office of Education, Washington, D.C. 20202.

***For information on Cooperative Education, write: Cooperative Education Programs, Division of College Support, Bureau of Higher Education, U.S. Office of Education, Washington, D.C. 20202.

CONCLUSION

The foregoing pages should provide a framework for your organization to conduct a self-audit, and to develop an effective affirmative action program which will provide equal employment opportunity required by law. Volume II of this Guidebook provides specific reference materials and resources to aid this task. Employers desiring further information and technical assistance should contact Office of Voluntary Programs, EEOC, 1800 G St., N.W., Washington, D.C. 20506, or the Regional Office serving your area. (See inside back cover for listing.)

FOOTNOTES*

I. THE LEGAL BASIS FOR AFFIRMATIVE ACTION

1. Bowe v. Colgate Palmolive, 416 F. 2d 711 (7th Cir. 1969) 721; Jenkins v. United Gas Co., 400 F. 2d 28 (5th Cir. 1968); Blue Bell Boots v. EEOC, 418 F. 2d 355 (6th Cir. 1969).

2. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

3. Griggs v. Duke Power Co., supra; U.S. v. Hayes International Corp., 456 F. 2d 112, 118 (5th Cir., 1972).

4. Griggs v. Duke Power Co., supra, at p. 430.

5. U.S. v. Ironworkers Local 86, 443 F. 2d 544 (9th Cir. 1971), cert. den., 404 U.S. 948 (1971); U.S. v. Hayes International Corp., supra; U.S. v. Brotherhood of Carpenters and Joiners, Local 169, 457 F. 2d 210, 214 (7th Cir. 1972); Leisner v. New York Tel., (March 2, 1973, C.A. 1972 - 2127, S.D.N.Y.)

6. Griggs v. Duke Power Co., supra. Also: Robinson v. Lorillard Corp., 444 F. 2d 791 (4th Cir. 1971); Jones v. Lee Way Motor Freight, Inc., 431 F. 2d 245 (10th Cir. 1970).

7. U.S. v. Bethlehem Steel Corp., 446 F. 2d 652 (2nd Cir. 1971); Papermakers and Paperworkers Local 189 v. U.S., 416 F. 2d 980 (5th Cir. 1969).

8. Griggs v. Duke Power Co., supra at. p. 431.

9. Ibid. See also Parham v. S.W. Bell Telephone Co., 433 F. 2d 421 (8th Cir. 1970); Asbestos Workers Local 53 v. Vogler, 407 F. 2d 1047 (5th Cir. 1969); U.S. v. Georgia Power Co., 5 EPD, 8460 (5th Cir. 1973); Quarles v. Phillip Morris, 279 F. Supp. (E.D. Va. 1968) Papermakers and Paperworkers Local 189 v. U.S., 416 F. 2d 980; Jones v. Lee Way Motor Freight Inc. supra; U.S. v. Sheet Metal Workers Local 36, 416 F. 2d. 123 (C.A. 8, 1969). Rowe v. General Motors. 437 F. 2d, 348.

10. Newton v. Anaconda Aluminum Co., unreported, C.A. #6340 Sept. 17, 1969, consent decree approved July 9, 1971 U.S. Dist. Ct., Louisville, Ky., EEOC Press Release No. 71 (June 30, 1971).

11. U.S. v. Virginia Electric Power Co., (Consent decree) 327 F. Supp. 1034 (E.D. Va., 1971).

* See p. 67 for explanation of abbreviations.

12. Robinson v. Lorrillard Corp., supra and at 3 EPD 10,294.

13. U.S. v. Household Finance Corp., 4 EPD para. 7680 (N.D. Ill., 1972) (Consent decree).

14. Statement of Employment Standards Administration, U.S. Department of Labor, January 20th, 1973. Schultz v. Wheaton Glass Co., 421 F. 2d 259 (1970).

15. Madlock v. Sardis Luggage Company, 3 EPD 8149 (DC 693-S, N.D. Miss., 1971).

16. U.S. v. Libbey-Owens Ford Co., Inc., 3 EPD para 8052 (N.D. Ohio, 1971) objections to decree overruled 3 EPD para. 8122.

17. 1 EPG para. 1860. (E.D. Pa. January 18, 1973, consent decree. Full text of A.T. & T. Agreement in this source.

18. U.S. v. U.S. Steel Corp., 5 EPD, 8619. May 3, 1973.); Carter v. Gallagher, 452 F. 2d. 315 (8th Cir. 1971); U.S. v. Virginia Electric Power Co., supra; Asbestos Workers Local 53 v. Vogler, supra; U.S. v. Ironworkers Local 86, supra, Papermakers and Paperworkers Local 189 v. U.S., supra; U.S. v. United Association of Journeymen & Apprentices of P. & PFI #73, 314 F. Supp. 160 (S.D. Ind., 1969); U.S. v. Libby-Owens Ford, Co., Inc. supra; U.S. v. Louisville Gas & Electric Co. (Consent decree, reported in Fair Employment Report, 7/17/72).

19. See footnote 17. Also, U.S. v. Enterprise Association of Steamfitters Local 638, 4 EPD para, 7906, (1972); U.S. v. IBEW Local 38, 438 F. 2d 144 (6th Cir. 1970); Contractors Association of Eastern Pa. v. Hodgson, 442, F. 2d 159 (3rd Cir. 1971), cert. den. 404 U.S. 854 (1971).

20. For further information on Title VII write: Office of Public Information, EEOC 1800 G Street, N.W., Washington, D.C. 20506. See also Appendix D and E.

21. See Appendix D. for Executive Orders 11246 and 11375 and Revised Order No. 4. Contact Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D. C. 20201 re proposed changes.

22. For information on the Equal Pay Act, write: Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

23. For information on Age Discrimination in Employment Act write: Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

24. For information on Title VI as it applies to employment discrimination write: Regional or national office of Federal agency providing the grant involved, or: U.S. Commission on Civil Rights, Office of General Counsel, 1121 Vermont Ave., N.W., Washington, D.C. 20425.

25. For information on state and local laws, and current "deferral" status of state and local agencies under Title VII, write: Office of State and Community Affairs, EEOC, 1800 G St., N.W., Washington, D.C. 20506.

26. 29. U.S.C. 151 et seq.

27. For information on Title IX Education Amendments of 1972, write Office of Civil Rights, U.S. Department of Health, Education and Welfare, Washington, D. C. 20201.

*Explanation of Abbreviations

EPG refers to Employment Practices Guide, EPD to Employment Practices Decisions, published by Commerce Clearing House, 4025 West Peterson Ave. Chicago, Ill. 60646. FEP refers to Fair Employment Practices Cases, a service published by the Bureau of National Affairs, 1231-25th St., N.W. Washington, D.C. Fair Employment Report is a bi-weekly newsletter published by Leonard Eiserer, P. O. Box 1067, Blair Station, Silver Spring, Md. 20910.

FOOTNOTES

II. BASIC STEPS TO DEVELOP AN EFFECTIVE AFFIRMATIVE ACTION PROGRAM

1. Parham v. Southwestern Bell Telephone Company, 433 F. 2d 421 (8th Cir. 1970); Clark v. American Marine Corp., 304 F. Supp. 603, 606 (E.D. La. 1969).

2. EEOC Guidelines on Discrimination Because of Sex, 37 Fed. Reg. 6835; (April 5, 1972)* Diaz v. Pan American Airways, 442 F. 2d 385 (5th Cir. 1971); Rosenfeld v. Southern Pacific Co., 444 F. 2d 1219 (9th Cir. 1971).

3. See The Law Against Age Discrimination in Employment, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

4. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

5. The Conference Board Inc., Non-Discrimination in Employment (1973), p. 28.

6. Griggs v. Duke Power Co., supra.

7. Gregory v. Litton, 316 F. Supp. 401 (C.D. Calif. 1970).

8. Carter v. Gallagher, 452 F. 2d 315. (8th Cir. 1971).

9. Commission Decision No. 72-0427, CCH Employment Practices Guide para. 6312 (August 31, 1971). See also Office of Federal Contract Compliance, Revised Order No. 4 #60-2.24(d)(3).

10. Ibid.

11. Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971).

12. Commission Decisions: CCH Employment Practices Guide para. 6231, 6286 and 6304; Gera v. New York-Pennsylvania Professional Baseball League, 3 EPD para. 8208 (N.Y. App. Div. 2d, 1971); Castro v. Beecher, 459 F. 2d 725 (1st Cir. 1972).

13. Donohue v. Shoe Corp. of America Inc., 337 F. Supp. 1357 (C.D. Calif. 1972). See also EEOC Decision 71-2444, CCH, Employment Practice Guide para. 6240.

14. Griggs v. Duke Power Co., supra.

*See Appendix D-5.

15. Jones v. Lee Way Motor Freight, Inc., 431 F. 2d 245 (4th Cir. 1970); Robinson v. Lorillard Corp., 444 F. 2d 791 (4th Cir., 1971). U.S. v. U.S. Steel Corp. 5 EPD, 8619.

16. U.S. v. Virginia Electric and Power Co., 327 F. Supp. 1034 (E.D. Va. 1971); Hicks v. Crown Zellerbach Corp., 319 F. Supp. 314 (E.D. La. 1970). U.S. v. U.S. Steel Corp. supra.

17. Sec. 1604.2(b), EEOC Rules and Regulations, 37 Fed. Reg., 6835 (Apr. 5, 1972). Schaffer v. San Diego Yellow Cab Inc., 4 EPD para. 7882 (9th Cir. 1971); Richards v. Griffith Rubber Mills, 300 F. Supp. 338 (D.C. Ore., 1969); Ridinger v. General Motors Corporation, 3 EPD para. 8175 (S.D. Ohio, 1971); Garneau v. Raytheon Co., 3 EPD para. 8153 (D.C. Mass., 1971).

18. See EEOC Guidelines on Discrimination Because of Sex, supra; Burns v. Rohr Corp., 346 F. Supp. 994 (S.D. Calif. 1972); EEOC Decision 70-558, (2 CCH EPG para. 6217); EEOC Decision 71-1447 (2 CCH EPG para. 6217).

19. See §1604.10 EEOC Guidelines, supra; Green v. Waterford Board of Education, 5 FEP 443 (72-1676 2nd Cir., Jan. 29, 1973); La Fleur v. Cleveland Board of Education, 465 F. 2d 1184 (6th Cir. 1972); Bravo v. Board of Education of City of Chicago, 4 FEP 994 (No. 72 C 970, N.D. Ill., July 7, 1972). See also Doe v. Osteopathic Hospital of Wichita, Inc., 333 F. Supp. 1357 (D.C. Kansas, 1971), a decision finding it a violation of Title VII to discharge an unwed woman because of pregnancy.

    Several states which require mandatory disability coverage have amended their laws to include maternity leave. Similar legislation is pending in other states. For a report of experience under the amended law of New Jersey, write: Citizens Advisory Council on the Status of Women, U.S. Department of Labor, Washington, D.C. 20210.

20. See footnote 19.

21. Johnson v. Pike Corp. of America, 332 F. Supp 490 (C.D. Calif. 1971).

22. U.S. v. U.S. Steel, supra; Savannah Printing Specialties Local 604 v. Union Camp., 350 Fed. Supp. 632 (S.D. Ga. 1972); Rowe v. General Motors 457, F. 2d 348 (5th Cir. 1972).

23. Robinson v. Lorrillard, supra.

24. NLRB v. Mansion House Center Management Corp., 5 EPD para. 8454 (8th Cir. 1973).

25. U.S. v. Lathers Local 46, 5 EPD 8104 (2nd Cir. January 18, 1973); Vogler v. Asbestos Workers Local 54, 407 F. 2d 1047 (5th Cir. 1969); U.S. v. Sheet Metal Workers Local 10, 3 EPD para. 8068 (D. N.J. 1970); U.S. v. Ironworkers Local 86, 443 F. 2d 544 (9th Cir. 1971), cert. den. 404 U.S. 984 (1971).

26. Papermakers and Paperworkers Local 189 v. U.S., 416 F. 2d 980; U.S. v. Hayes International Corp., 415 F. 2d 1038 (5th Cir. 1969).

* U. S. GOVERNMENT PRINTING OFFICE : 1974 O - 531-489

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REGIONAL OFFICES, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICES	STATES
ATLANTA REGIONAL OFFICE Citizens Trust Building Suite 1150 75 Piedmont Avenue, N.E. Atlanta Georgia 30303 (404) 526-6991	Alabama, Canal Zone, Florida, Georgia, Kentucky, North Carolina, Mississippi, South Carolina, Tennessee
CHICAGO REGIONAL OFFICE 600 South Michigan Ave. Rm 611 Chicago, Illinois 60605 (312) 353-1223	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
DALLAS REGIONAL OFFICE 1100 Commerce St., Rm 5A4 Dallas, Texas 75202 (214) 749-1841	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
KANSAS CITY REGIONAL OFFICE 601 E. 12th St. Rm. 113 Kansas City, Missouri 64106 (816) 374-2781	Iowa, Kansas, Missouri, Nebraska
NEW YORK REGIONAL OFFICE Federal Office Building Room 4000 26 Federal Plaza New York, New York 10007 (212) 264-3640	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont
PHILADELPHIA REGIONAL OFFICE Jefferson Building 1015 Chestnut Street Philadelphia, Pennsylvania 19107 (215) 597-7784	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
SAN FRANCISCO REGIONAL OFFICE 300 Montgomery St., Suite 740 San Francisco, California 94104 (415) 556-1775	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, Samoa, South Dakota, Utah, Wake Island, Washington, Wyoming

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AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT

A guidebook for employers

Volume 2 Appendices

U.S. Equal Employment Opportunity Commission
Washington, D.C. 20506

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THE U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Chairman:	John H. Powell, Jr.
Vice Chairman:	Dr. Luther Holcomb
Commissioners:	Ethel Bent Walsh
	Colston A. Lewis
	Raymond L. Telles
Executive Director:	Thomas G. Cody

TECHNICAL ASSISTANCE AVAILABLE TO DEVELOP AFFIRMATIVE ACTION PROGRAMS

Title VII directs EEOC to furnish technical assistance to aid voluntary compliance with the law. The Commission's Office of Voluntary Programs (with staff at Headquarters and in Regional Offices) has been established to provide such assistance. For aid in analyzing your employment system and developing procedures to implement this Guide, you may contact:

Office of Voluntary Programs
Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

or

The Regional Office serving your area.
(See inside back cover for list of Regional Offices).

This publication was developed and written by Evelyn M. Idelson, Education Programs Division, Office of Voluntary Programs.

Prepared with assistance of professional and clerical staff of Education Programs Division, Richard E. Dickerson, Chief, under general supervision of George O. Butler, Acting Director, Office of Voluntary Programs.

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AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT

A guidebook for employers

Volume 2 Appendices

January 1974

U.S. Equal Employment Opportunity Commission
Washington, D.C. 20506

APPENDICES

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APPENDIX A

MINORITY IDENTIFICATION*

You may acquire the minority group information necessary for this section either by visual surveys of the work force, or from post-employment records as to the identity of employees. Eliciting information on the racial or ethnic identity of an employee by direct inquiry is not encouraged. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

Where records are maintained, it is recommended that they be kept separately from the employee's basic personnel file or other records available to those responsible for personnel decisions.

Since visual surveys are permitted, the fact that minority group identifications are not present on company records is not an excuse for failure to provide the data called for.

Moreover, the fact that employees may be widely dispersed throughout a State or a number of States, and that there are difficulties in conducting a visual survey, do not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instructions or otherwise.

Please note that conducting a visual survey and keeping post-employment records of the race or ethnic origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and recordkeeping as to race, etc., relate only to applicants for jobs, not to employees.

Item 1 provides for reporting Negroes, American Indians, Orientals, and Spanish Surnamed Americans wherever such persons are employed. For purposes of this report, the term Spanish Surnamed Americans is deemed to include all persons of Mexican, Puerto Rican, Cuban, or Spanish origin. Identification may be made by inspection of records bearing the employees' names, by visual survey, by employees' use of the Spanish language, or other indications that they belong to this group. It is to be noted that the following States are among those having large concentrations of Spanish Surnamed Americans: Arizona, California, Colorado, Florida, New Jersey, New Mexico, New York and Texas. Large concentrations of Spanish Surnamed Americans are found in particular localities in other States.

In all instances an employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

Eskimos and Aleuts are included in the American Indian column for purposes of the EEO-1 report.

*This information is excerpted from Standard Form 100, Instructions for Filing Employers Information Report EEO-1. Specific information on who is required to file EEO-1 reports is contained in these instructions. In general, all employers subject to Title VII with 100 or more employees, and all holders of government contracts or subcontracts over $10,000 are required to file these reports annually. For copy of Instructions, call or write: Joint Reporting Committee, P.O. Box 933, Philadelphia, Pa. 19139; (215) 474-4335.

DEFINITION OF JOB CATEGORIES FOR REPORTING PURPOSES*

Occupational Data—You are required to present your employment data by job category. In order to simplify and standardize the method of reporting, all jobs are considered as belonging in one of the nine broad occupations shown in the table. To assist you in determining how to place your jobs within the nine occupations, a description of job categories follows in the Appendix (4). For further clarification, you may wish to consult the *Dictionary of Occupational Titles*, U.S. Department of Labor (U.S. Government Printing Office, Washington, D.C., 1965).

DESCRIPTION OF JOB CATEGORIES

Officials and managers.—Occupations requiring administrative personnel who set broad policies, exercise over-all responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried foremen who are members of management, purchasing agents and buyers, and kindred workers.

Professional.—Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations workers, physical scientists, physicians, social scientists, teachers, and kindred workers.

Technicians.—Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, draftsmen, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical sciences), and kindred workers.

Sales.—Occupations engaging wholly or primarily in direct selling. Includes: advertising agents and salesmen, insurance agents and brokers, real estate agents and brokers, stock and bond salesmen, demonstrators, salesmen and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

Office and clerical.—Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office boys, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, and kindred workers.

Craftsmen (skilled).—Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid foremen and leadmen who are not members of management, mechanics and repairmen, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, and kindred workers.

Operatives (semiskilled).—Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics) plumbers, bricklayers, carpenters, electricians, machin-

*The above is excerpted from Standard Form 100, Instructions for Filing Employer Information Report EEO-1. For copies of EEO-1 and Instructions, write: Joint Reporting Committee, P.O. Box 933, Philadelphia, Pa. 19139, or call (215) 474-4345.

DEFINITION OF JOB CATEGORIES FOR REPORTING PURPOSES (CONT.)

ists, mechanics, plumbers, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, deliverymen and routemen, dressmakers and seamstresses (except factory), dryers, furnacemen, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motormen, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firemen, truck and tractor drivers, weavers (textile), welders, and flamecutters, and kindred workers.

Laborers (unskilled).—Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and groundskeepers, longshoremen and stevedores, lumbermen, raftsmen and wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

Service workers.—Workers in both protective and nonprotective service occupations. Includes: attendants (hospital and other institution, professional and personal service, including nurses aides, and orderlies), barbers, charwomen and cleaners, cooks (except household), counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeepers, stewards, janitors, policemen and detectives, porters, waiters and waitresses, and kindred workers.

Apprentices.—Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship, regardless of whether the program is registered with a Federal or State agency.

On-the-job trainees:

Production.—Persons engaged in formal training for craftsmen—when not trained under apprentice programs—operative, laborer and service occupations.

White collar.—Persons engaged in formal training, for official, managerial, professional, technical, sales, office and clerical occupations.

SAMPLE

SAMPLE LETTERS AND INTERNAL REPORTING FORMS

On the following pages are excerpts from one employer's Affirmative Action Program which provide examples of some needed communications and internal reporting forms. These samples are not legally required, nor specifically recommended by EEOC. Each employer will find it necessary to develop forms suitable for his or her specific employment situation.

a. EEO Policy Statement issued by President to Employees

b. Letter to Regular Recruitment Sources

c. Letter to Suppliers and Vendors

d. Maternity Leave Policy

e. List of records and data to be kept by each organizational unit, and samples of some of the internal reporting forms used to measure, monitor and audit the AAP. These include:

1. Measurements of utilization of minorities and females in relation to their availability in relevant work areas.

2. Applicant flow data.

3. Promotion and transfer data.

4. Training Activity.

5. Termination data.

6. Equal Pay Survey.

7. Survey of college-graduate employees, (minority - non-minority; male - female).

8. Forms and instructions for conducting Goals and Timetables Analysis.

9. Quarterly Statistical Report. (Note: This form and data are similar to format of annual EEO-1 Report, and therefore provide basic data for that report.)

10. Quarterly Narrative Progress Report.

SAMPLE

INTEROFFICE MEMORANDUM

TO: All Personnel DATE: April 3, 1973

FROM: CITY:

SUBJECT: Equal Employment Opportunity Policy

This will serve to reiterate the policy of _____ Company, Inc. and the management of its facilities to work continually toward improving recruitment, employment, development and promotional opportunities for minority employees and for women.

Certainly, one of the most complex and tragic problems which confronts our Company and our nation today is the absence of true equal opportunity for all people without regard to race, color, religion, sex, age or national origin.

While there have been civil rights laws enacted during the past decades to assure such equality, many individuals and institutions have been negligent in meeting the requirements of these laws to the extent that equal opportunity for all people, in fact, is not a reality.

Consequently, the denial of equal access to opportunities for development and growth has permitted discrimination to continue in a variety of forms. This means that proposed remedies must go beyond the mere announcement of an equal opportunity policy. We, _____ must recognize and accept our responsibility to design and implement programs which strike at the total problem rather than simply overt manifestations.

In a similar manner, women have found themselves locked into sexual role stereotypes which have acted to exclude their full participation in the mainstream of the working world. Attitudes towards women have prevented women from realizing their full potential and achieving equality within the institutions of society.

SAMPLE

We must therefore strive, aggressively, to insure the entry and growth of minorities and women in our workforce until it is emphatically clear that equality of opportunity in the Company is a fact as well as an ideal. To achieve ultimate effectiveness in this matter, our efforts toward equal opportunity for all people in our employment must extend above and beyond the letter of the law -- that is, total commitment to this goal on the part of every _____ employee.

Your cooperation and support in Affirmative Action Program efforts is essential in assuring equal employment opportunities in all Company operating facilities.

_____

President

SAMPLE

_____ ___ (Personnel Agency)

_____

_____

Ms./Msrs.:

_____ and its subsidiaries is concerned that it fulfill its role as an equal opportunity employer. We request your vigorous support in our affirmative action efforts as it relates to providing employment opportunity for minority groups and women. We do not discriminate against any employee or applicant for employment because of age, race, sex, creed, color or national origin.

Utilization of any agency is predicated upon their full compliance with our equal employment opportunity policy. We request that qualified women and minorities be referred to us for any job opening listed with your agency.*

Please acknowledge your support of our commitment by signing a copy of this letter and returning it to us. Thank you.

Sincerely,

* The letter should also request that qualified males be referred for traditionally "female" jobs.

SAMPLE

_____ (Supplier, Vendor, etc.)

_____

_____

Ms./Msrs.:

As your firm is well aware, _____ and its wholly owned subsidiaries are equal opportunity employers.

Pursuant to Executive Order 11246 as amended, you are advised that under the provisions of government contracting and in accordance with the Executive Orders, contractors and subcontractors are obliged to take affirmative action to provide equal employment opportunity without regard to race, creed, color, national origin, age or sex.

We expect to see our commitment to equal opportunity employment to be reflected in the racial and sexual composition of your firm's workforce and urge a vigorous affirmative action program to overcome underutilization.

The attached form will need to be completed and returned to us at your earliest convenience. Thank you.

Sincerely,

_____

SAMPLE

AFFIRMATIVE ACTION PROGRAM
Supplier, Subcontractor, etc., EEO Status Report

Supplier Name _____ Telephone _____

Street Address _____ City _____ State _____

Zip Code _____ Number of Employees _____

This Firm is:

_____Independently Owned and Operated.

_____An Affiliate) Parent Company _____
or)
_____A Subsidiary) OF Address _____
or)
_____A Division) _____

_____ Small Business _____ Large Business

	Seller Has	Seller Has Not
Held contracts or subcontracts subject to the Equal Opportunity Clause of Executive Order 11246.		
Filed the Equal Employment Opportunity Information Report EEO-1 for the period ending March 31 prior.		
File Equal Employment Opportunity Information Report EEO-1 when required.		
Developed a written Affirmative Action Program.		

Seller's Equal Employment Opportunity Program has _____ Has not _____ been subject to a Government Equal Opportunity Compliance Review. If so, when _____.

Seller acknowledges receipt of the notice to prospective subcontractors of requirement for certification of nonsegregated facilities and certifies _____ does not certify _____ compliance with that requirement.

Signature _____ Title _____

Date _____

PLEASE RETURN FORM TO:

Note: These provisions for maternity leave are identical to those provided by this employer to all employees for temporary disabilities.

PERSONNEL POLICY & PROCEDURE MANUAL	number
	effective date 10-12-71
subject MATERNITY LEAVE	page 1 of 2

SAMPLE

I. PURPOSE

To provide a method for increasing the employment opportunities for women and to remove those barriers which act to inhibit the full utilization of women in the work force.

II. POLICY

A. The Company defines childbirth and the complications of pregnancy as a temporary medical disability for which a maternity leave will be granted.

B. The exempt employee will be paid her full monthly basic salary for the first three (3) months of absence, and 75% of basic salary for the next three months.

C. Seniority will continue to accumulate during the entire period of such leave.

D. All contributory benefits will continue in effect during the period of leave with the employee contributions being deducted from basic monthly salary.

E. Long term disability coverage will continue in effect during the period of maternity leave for illness or injury other than pregnancy.

F. The usual period of maternity leave will be 8 to 10 weeks. Leaves extending beyond the 8 to 10 week period will be resolved on an individual case basis and accompanied by the appropriate medical certification. Leaves beginning during the first 16 weeks of pregnancy will extend to the 6th week after delivery.

G. An employee choosing to extend maternity leave beyond the recommendation of her physician will be placed on personal leave and all insurance cancelled.

H. Contributory life and dependent insurance may be continued, by the employee paying for the coverage, during an extended maternity leave.

form 3370

issued by		supersedes	date
Vice President - Personnel	10-12-71	NEW	

subject: MATERNITY LEAVE

number:

ve date: 10-12-71

effective date: 10-12-71

SAMPLE

III. PROCEDURES

A. The point in which maternity leave commences is a matter for the employee and her physician to determine. Notification of maternity leave will be made to her supervisor and to the Medical Director and accompanied by the appropriate certification from the employee's physician.

B. The time of return to work after childbirth is a matter for the employee's physician to determine. In this case, return from maternity leave will be expedited in the same manner as return from disability leave.

C. Where feasible, the employee will contact the Manager - Personnel Planning at least thirty days prior to the termination of leave stating her intention to return or not to return to regular employment at the conclusion of the maternity leave. Every effort will be made to place the employee on the same or comparable job upon her return from leave.

D. Maternity benefits covered by insurance appear in a separate bulletin available from the Benefits Department.

IV. RESPONSIBILITY

The Vice President - Personnel will have final responsibility to maintain and revise this policy.

V. COUNSEL AND AUDIT

Manager - Personnel Planning

Supervisor - Benefits Administration

form 2373

SAMPLE

SUPPORT DATA AND RECORD KEEPING

REQUIREMENTS FOR AAP

The following information should be included in support of each organizational unit's AAP:

1. Most recent SF-100 (EEO-1) Report and previous three years.

2. Number of applications for each major job groupings and hires by sex and minority group for last twelve (12) months. (Form P)

3. Chronological list of all hires by name, sex, minority group, job, rate of pay, and recruitment source for last twelve (12) months. (Form P)

4. If there is a college recruitment program, list of schools, date, name, sex, minority group of those interviewed and indicate those to whom offers were extended and disposition. (Form P)

5. List of all promotions and transfers (specify which) giving date, name, sex, minority group, previous job, department and pay and new job, department and pay for last twelve months. (Form Q)

6. List of all terminations by department for past twelve (12) months, giving name, sex, minority group, job and department, date of hire, date of termination and reason. (Form S)

7. List of various training programs ongoing or completed during past twelve (12) months, with name, sex, minority group or participants, date of completion and job and pay before and after training. (Form R)

8. Copies of any agreements pursuant to investigations of charges of discrimination by Federal, State, or Local agencies and copies of any outstanding charges and present status.

9. Copies of all current Labor Agreements.

10. Seniority lists or computer printouts showing all employees by name, sex, minority group, date of hire, other job related dates, original job, date of last promotion, present job and EEO-1 category, rate of pay, and if available, education

SAMPLE

and/or special training. Data must be provided in seniority order within departments, along with all interpretive materials including organization charts, promotional sequences, and lines of progression. Those on layoff status should be designated.

11. Affirmative Action Plan goals along with current status of attainment.

12. Material on testing.

13. Written job descriptions and qualifications.

14. Additional support data will include, but not be limited to:

    1. Progression line charts
    2. Seniority Rosters
    3. Applicant Flow Data
    4. Applicant Rejection Ratios (all indicating sex and minority group)

SAMPLE

GOALS AND TIMETABLES

INSTRUCTIONS

Each ____ will establish goals and timetables to rectify underutilization of minorities and women. Clearly, this is the heart of each unit's AAP. Goals which are established should be significant, measurable and attainable given the commitment of the organizational unit and its good faith efforts. The internal workforce utilization analysis and the analysis of the relevant external labor area provide the basic data on which goals and timetables are formulated. In combination with the _____ goals and timetables will be established. The following are the parameters for goal and timetable determination.

1. Goals and timetables will be determined for women and minorities separately.

2. In establishing timetables to meet goals, each organizational unit will consider the anticipated expansion, contraction and turnover of its workforce.

3. Specific goals and timetables for women and minorities will be established for each category of employment (e.g., office, factory, apprenticeship, college, professional, etc.)

4. Specific goals and timetables for women and minorities will be established for each promotional category (e.g., hourly to exempt, office, factory, professional, etc.)

5. The nature of the goals and timetables established are a function of:

    a. The degree of underutilization within the specified job family.

    b. The scope of the relevant work area recruited from.

    c. The availability of qualified or qualifiable minorities and women in the relevant work area.

    d. The number of job openings available, which is determined by turnover, expansion, etc.

SAMPLE

e. The commitment of the organizational unit to correct underutilization of minorities and women.

f. The AAP and EEO policy of the _____ _____ Company.

6. The one year and five year goals will be recorded on Form XX, by completing Columns 37-61 per the instructions.

SAMPLE

FORM P

AFFIRMATIVE ACTION PLAN

APPLICANT FLOW DATA

(Organization Unit) _____

(Location) _____

(Time Period) _____

Person Preparing Report _____

DATE	NAME	RACE	SEX	POSITION APPLYING FOR	REFERRAL SOURCE	EEO CATEGORY OF JOB	DISPOSITION *	Complete only if here: JOB TITLE	DATE OF HIRE	RATE OF PAY	ORG. UNIT WHO HIRED

1 - Interviewed, no offer
2 - Interviewed, offer extended, & hired
3 - Interviewed, offer extended, but rejected

SAMPLE

FORM Q

AFFIRMATIVE ACTION PROGRAM

PROMOTION & TRANSFER DATA

organizational unit_____
Location_____
Time Period_____
Person_____

← complete only if promoted or transferred →

DATE	NAME	RACE	SEX	PRESENT POSITION & S.G.	PRESENT PAY	PRESENT ORG. UNIT	PRESENT EEO-1 CATEGORY	DISPO-SITION*	NEW POSITION & S.G.	NEW ORG. UNIT	NEW DEPT. NAME & NO.	NEW EEO-1 CAT.	EEO-1 STATUS CHANGE (yes-no)	AMT. SALARY CHANGE (+or-)	NEW SALARY	TRANSFER =T PROMOTION =P

1 = Interviewed
2 = Not interviewed
3 = Interviewed, but no change

SAMPLE

A-18

FORM R

AFFIRMATIVE ACTION PROGRAM

TRAINING ACTIVITY SUMMARY

Organizational Unit_____
Location_____
Time Period_____
Person Preparing Data_____

TYPE OF TRAINING	NAME OF PARTICIPANT	RACE	SEX	DURATION OF TRAINING	DATE COMPLETED	JOB BEFORE TRAINING	PAY BEFORE TRAINING	JOB AFTER TRAINING (If same, so indicate)	PAY AFTER TRAINING (If same, so indicate)

SAMPLE

FORM S

AFFIRMATIVE ACTION PROGRAM

TERMINATION DATA

Organizational Unit_____
Location_____
Time Period_____
Person Preparing Data_____

DATE	NAME	RACE	SEX	DATE OF INITIAL HIRE	POSITION AT TIME OF TERMINATION	DATE OF TERMINATION	EEO-1 CATEGORY DESIGNATION	ORG.UNIT SEPARATED FROM	DEPT. & NO. TERM-INATED FROM	REASON FOR TERMINATION

SAMPLE

FORM T

AFFIRMATIVE ACTION PROGRAM

QUARTERLY STATISTICAL REPORT

Organizational Unit _____
Location _____
Time Period _____

Job Categories	All Employees			Male				Female			
	Total (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	American Indian (6)	Spanish Surnamed American (7)	Negro (8)	Oriental (9)	American Indian (10)	Spanish Surnamed American (11)
Officials & Managers											
Professionals											
Technicians											
Sales Workers											
Office & Clerical											
TOTAL Lines 1-5											
Craftsmen (Skilled)											
Operatives (Semi-Skilled)											
Laborers (Unskilled)											
Service Workers											
Total Lines 7-10											
TOTAL All Lines											
In columns 1, 2 and 3, include all employees in the establishment including those in min.groups. The data below shall be included in the figures for the appropriate occupation categories above.)											
On-the-job trainees											
Apprentices											
Production White Collar											
(Report only employees enrolled in formal on-the-job training programs.)											

Date of Survey _____

Person Preparing Report _____
Name (Typed) Signature

SAMPLE

FORM V

AFFIRMATIVE ACTION PROGRAM

FACTUAL REVIEW - COLLEGE HIRES ANALYSIS

Organization Unit _____

Location _____

Person Preparing Data _____

Date _____

	Total #	% of Intake	Mean Age	No. & % Female	Mean Starting Salary	Mean Present Salary	Mean # of Promotions To-Date	Mean Salary Increases To-Date.* (Includes - Genl. Specs. & Merit Increases
TOTAL COLLEGE HIRES								
TOTAL NON-MINORITY HIRES								
. BACHELOR LEVEL								
. MASTERS LEVEL								
TOTAL MINORITY HIRES								
. BACHELOR LEVEL								
. MASTERS LEVEL								
TOTAL FEMALE HIRES								
. BACHELOR LEVEL								
. MASTERS LEVEL								

SAMPLE

FORM Y

AFFIRMATIVE ACTION PROGRAM
ANALYSIS OF RELEVANT WORK AREA

Organizational Unit _____

Location _____

Name of Person Preparing Data _____

Date _____

	MALE						FEMALE					
	Non-minority	Negro	SSA	Oriental	American Indian	TOTAL MALE	Non-minority	Negro	SSA	Oriental	American Indian	TOTAL FEMALE
% of population labor area surrounding facility												
% of present work-force at facility												
unemployment of labor area surrounding facility (%)												
availability of those with requisite skills in reasonable recruiting area (%)	SEE FORM Z →											
availability of women seeking employment in recruitment area # %							#					
availability of promotable or transferable women from within the organization							%					

Training institutions capable of training persons in the requisite skills.

_____

_____

_____

_____

Training which organizational unit is able to undertake as a means of making all job classes available to women.

_____

_____

_____

_____

GWDIS

SAMPLE

FORM 3

AFFIRMATIVE ACTION PROGRAM

AVAILABILITY OF REQUISITE SKILL PERSONS BY JOB CATEGORY IN REASONABLE RECRUITING AREA

	RELEVANT LABOR AREA*	MALE							FEMALE						
		Non-Minority	Negro	SSA	Oriental	American Indian	TOTAL MALE		Non-Minority	Negro	SSA	Oriental	American Indian	TOTAL FEMALE
Officials & Managers														
Professionals														
Technicians														
Sales														
Office & Clerical														
Craftsmen (Skilled)														
Operatives (Semi-skilled)														
Laborers (Unskilled)														
Service Workers														

*Relevant Labor Area Codes

N	National
R	Regional
S	State
A	SMSA
C	County
L	City

SAMPLE

FORM XX

* N = Nation
R = Regional
S = State
A = SMSA
C = County
L = City

- AFFIRMATIVE ACTION PROGRAM

GOALS & TIMETABLES ANALYSIS

					CURRENT EQUAL OPPORTUNITY STATUS																																
																	RELEVANT LABOR AREA																					
																	FEMALE					MALE															
JOB FAMILY	Salary Grade	Total Employees as of ____ (date)	Total By Sex		FEMALE EMPLOYEES					MALE EMPLOYEES					Nat'l.; Reg.; State; SMSA; City; County	Non-Minority	Negro	SEA	Oriental	American Indian	Non-Minority	Negro	SEA	Oriental	American Indian	UNDERUTILIZATION											
			Male	Female	Non-Minority	Negro	SEA	Oriental	American Indian	Non-Minority	Negro	SEA	Oriental	American Indian													FEMALE					MALE				
																										MN	M	SEA	O	AI	MN	M	SEA	O	AI
			No.	No.												*	*	*	*							Col. 17X(2-6)	Col. 18X(2-7)	Col. 19X(2-8)	Col. 20X(2-9)	Col. 21X(2-10)	Col. 22X(2-11)	Col. 23X(2-12)	Col. 24X(2-13)	Col. 25X(2-14)	Col. 26X(2-15)
Column # 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36

SAMPLE

FORM XX

GOALS AND TIMETABLES ANALYSIS

Location _____

Organizational Unit _____

Name of Person filling out form _____

Date _____

PROJECTED EQUAL OPPORTUNITY STATUS

5 YEAR GOAL (Net Change)											Projected Total Employees Next 12 Months	Projected Turn-over Next 12 Months	Net Job Openings	Promotables Next 12 Months									GOAL NEXT 12 MONTHS Period Covered _____									
FEMALE					MALE									MINORITY				FEMALE					FEMALES (Net Change)					MALES (Net Change)				
Non-Minority	Negro	SSA	Oriental	American Indian	Non-Minority	Negro	SSA	Oriental	American Indian					N	SSA	O	AI	NM	N	SSA	O	AI	Non-Minority	Negro	SSA	Oriental	American Indian	Non-Minority	Negro	SSA	Oriental	American Indian
Column 37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68

SAMPLE

FORM XX

Column 1

List each job family in the organizational unit having a similar level of skill and/or wage (salary) and the same relevant labor area. Since goals are to be set by the job family the relevant labor area for the job group must be the same.

Column 2

List the salary grade(s) for each job family.

Column 3

Total number of employees, male and female, minority and non-minority. Date is the last day of the month in which this form is filled out.

Column 4-5

Total male employees and female employees respectively, regardless of minority or non-minority group.

Column 6-10

Number of female employees by the groups indicated.

Columns 11-15

Number of male employees by the groups indicated.

Column 16

Since your labor market area varies with the level of the job category, indicate for each job grouping the area; e.g. U.S., Midwest, Indiana, Dallas SMSA, Bartholomew County, Columbus. Note! Where the percent of the minorities to the total population is greatly diluted by using the broader area, the unit may be required to use the smaller area. On the other hand, you may be required to extend your normal relevant labor area where a large minority community is within reasonable distance (approximately 50 miles). The recruitment area for exempt employees is usually national, although in some instances regional recruitment is acceptable.

Column 17

Percent non-minority females are represented in the labor force of your relevant labor area.

SAMPLE

Columns 18-21

Percent each minority female group is represented in the population of your relevant labor area. This figure is applied in each job grouping as explained above.

1970 Census Series
Source material: PC(1)-B-C-D
See above information.

Column 22

Column 22 has been added for two reasons: (1) non-minority males are typically underutilized in the Office and Clerical category and in job categories and/or departments having a disproportionate high concentration of minorities, and (2) you can show the percent change of non-minority males as you add minorities and women to the job category. You need not obtain statistics on non-minority males from census reports. Merely arrive at this figure by subtracting total percent of all other groups (all women and all minorities) from 100 percent.

Columns 23-26

Percent each male minority group is represented in the population of your relevant labor area. Apply percent figure same as explained above.

Note! The same percent figure is used in each job grouping having the same relevant labor area. For example, if the relevant labor area for supervisors, craftsmen and below is the same, then the same percent figure is used.

Source material: Same as for minority females.

Columns 27-36

Note computation formula at the top of each column; e.g., to obtain underutilization on non-minority (NM) females, multiply column 17 by column 3 and subtract column 6.

Columns 37-46

Both 12 month and 5 year goals are required. You are asked to insert figures you believe you can reach based on existing availability of qualified and qualifiable people; anticipated availability of people, projected manpower needs; amount of training you can conduct; extent to which your organization can actively work with training and educational institutions to encourage minorities and women to prepare themselves for work in your industry, etc. In many categories you will be expected to reach minority (male and female) population and labor force (non-minority female) parity within the five years depending on the skill level, education required, experience necessary, seniority system, and so on. For those job groups in which you do not set the parity

SAMPLE

figure (i.e., the same figure as in the "underutilization" column), you should state specifically the reasons for a smaller figure. In short, the figures inserted in columns 37-46 should be the same as columns 27-36 but if they are not the same, please explain.

> Note! The numbers of employees shown in Columns 37-46 are net figures, therefore, they are not total employees you should have in five years, but total additions to your present workforce.

Column 47

Reflect expected expansion or contractions of each job grouping.

Column 48

As used here turnover means replacement of people who terminate either voluntarily or involuntarily. Insert net turnover; i.e., do not include those openings that will be filled by employees with recall rights, by promotions and by transfers. Also, where you reduce your work force and you do not replace people who quit or are terminated, this will affect your turnover.

Column 49

Number of vacancies you intend to fill once you have accounted for expansion or contraction and turnover. For example:

> Column 47 = 50 employees represents increase of 2 employees where present workforce is 48.
> Column 48 = 3 employees quit and you intend to replace them.
> Column 49 = 5 (2 new jobs + 3 replacements)

Column 50-58

Number of minorities (male and female) and non-minority females you expect to promote within the next 12 months. As used here promotables means those people whom you have identified as having the qualifications (or will have within the next 12 months) to fill a higher job and such higher job(s) will be open within the next 12 months. If you have more qualified minorities and/or women than you have job openings, so indicate on the comment sheet. (Attach separate list of promotables where no jobs are open in the next 12 months.)

Columns 59-68

Number of each group you plan to add or subtract to each job group the next 12 months. Do not insert a figure representing present employees plus additions.

> Please total all your figures and insert dates.

SAMPLE

FORM M

EQUAL PAY STUDY

Location _____
Organizational Unit _____
Date _____
Person Preparing Data _____

Name	Sex	Race	Title	Salary Grade	Current Salary	Education Level	Major	Relativity to Present Job	Skills/Exp. Required to Perform Present Job	Seniority	Scope of Effort	Number of Promotions	Other Comments

FORM O

AFFIRMATIVE ACTION PROGRAM

SAMPLE

QUARTERLY NARRATIVE
PROGRESS REPORT

Organizational Unit _____

Location _____

Time Period _____

Person Preparing
Data _____

AAP OBJECTIVE

PROGRESS TO DATE

ON SCHEDULE? ____Yes ____No

SPECIAL PROBLEMS/CONTINGENCIES:

PROPOSED FUTURE AFFIRMATIVE ACTION (Specified for next quarter)

APPENDIX B

DATA SOURCES FOR UTILIZATION ANALYSIS AND DEVELOPING AFFIRMATIVE ACTION GOALS*

Much data on various minorities and females in the population and workforce of relevant labor areas and their general or specific skills can be obtained from national, state and local sources. You may find it difficult to get exact numerical information on females or minorities with specific skills who are available in your area. The following resources should be helpful. However, excessive data collection is not necessary if your own employment survey reveals absence or serious underrepresentation of any group. Affirmative efforts to locate and/or train females and minorities for jobs where they are not represented will be more productive than intensive effort to locate data justifying their underutilization.

I. Census Bureau, U.S. Department of Commerce, Washington, D.C. 20233.

Basic data on population, education, employment and occupational status may be obtained from the following publications:

A. 1970 Census of Population: General Social and Economic Characteristics PC (1) -C Series. Separate reports for each State, with data on age, race, sex, Spanish heritage, mother tongue, years of school completed, vocational training, employment status, occupation, industry, and other factors. Data is presented for Counties, Standard Metropolitan Statistical Areas (SMSA's), Urban Areas, and Places of 2500 Inhabitants or More. Total cost of 53 reports: $121.75. Individual state report costs vary. Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Commerce Department Field Offices.

B. 1970 Census of Population, Detailed Characteristics PC (1) D Series. More detailed breakdowns of educational, vocational training and occupations cross-classified by sex, age and race. Information available for nation, states, SMSA's and large urban areas. For details and prices write: Publications Distribution Section, Bureau of Census, U.S. Department of Commerce, Washington, D.C. 20233, or Superintendent of Documents (see above).

C. U.S. Census of Population 1970, Final Report PC (2) 7 (C) Occupation by Industry. Breakdowns by race, national origin and sex. $7.25 (from Superintendent of Documents, address above).

*Publications are free unless otherwise noted. See page B-5 for new Affirmative Action data "package" prepared by U.S. Department of Labor.

D. U.S. Census of Population Final Report PC (2) 8 (B). Earnings by Occupation and Education. Detailed breakdowns by industry, race, sex, national origin. $4.50 from Superintendent of Documents, (address above).

E. Maps -- Number of Indians by Counties of the United States: 1970 (GE-50 No. 549); Number of Negro Persons by Counties of the United States: 1970 (GE-50 No. 47); and Negro Population As Percentage of Total Population by Counties of the United States: 1970 (GE-50 No. 48) -- may be obtained for 50 cents each from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or from Commerce Department District Offices in major cities.

II. Women's Bureau, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

A. A Guide to Sources of Data on Women and Women Workers for the United States and for Regions, States and Local Areas.

This comprehensive guide lists major data sources on population, education, civilian labor force, employment, unemployment, occupation, industry and labor reserve, indicating in each case whether data is available by region, state, or SMSA. It includes basic data sources on minorities as well as women. Cited are: materials from Census Bureau, U.S. Department of Health, Education & Welfare, and extensive materials from U.S. Department of Labor's Bureau of Labor Statistics and Employment Standards Administration.

Also available from the Women's Bureau:

B. Women Workers in Regional Areas and in Large States and Metropolitan Areas. (1971).

C. Facts on Women Workers of Minority Races. (1972)

The Women's Bureau regularly prepares tabulations by State of selected data on women workers. Request data on particular states from the Bureau.

III. Equal Employment Opportunity Commission, Office of Research, 2121 K St., N.W., Washington, D.C. 20506.

Job Patterns for Minorities and Women in Private Industry, 1970, Volumes I and II.

Numbers employed in companies filing EEO-1 reports, by industry, industry group, major occupation group, sex and minority group; for the nation, states and SMSA's. (More recent data is available on microfilm). Data on minority and female participation in Joint Apprenticeship Programs also is available.

IV. Bureau of Labor Statistics, U.S. Department of Labor, Washington, D.C. 20210.

A. Geographic Profile of Employment and Unemployment (Annual). Data on labor Force, employment, unemployment, by race and sex, for the nation, states and for SMSA's.

The Bureau of Labor Statistics (BLS) also has other useful publications, such as:

B. Occupational Outlook Handbook, 1972-73 edition). Estimates, among other data, the number and proportion of women to total employed in selected occupations. National data. $6.25.*

C. Employment and Earnings (monthly) Major occupation groups and selected subgroups of employed persons by race and sex. Race and sex breakdowns on national data only. Single copies $1.00, annual subscription $10.00.*

D. Industry Wage Surveys. Data for selected occupations within individual industries by sex. Areas covered vary. Write Bureau of Labor Statistics for list and cost of individual reports.

V. Educational Data Sources

A. Statistics Concerning Doctorates Awarded to Women. Available from Association of American Colleges, Project on the Status and Education of Women, 1818 R St., N.W., Washington, D.C. 20009. A compilation of three (3) studies indicating percentage of doctorates awarded to women in various disciplines, and by specific institutions for the period 1953-1969.

B. Earned Degrees Conferred 1969-70: Part A. Summary Data; Part B. Institutional Data. National Center for Educational Statistics, Office of Education, U.S. Department of Health, Education and Welfare. (annual). Part B provides details on degrees conferred by sex, field and level at individual institutions, grouped by state. Part A. $.50; Part B. $5.00 from Government Printing Office, Washington, D.C. 20402. 1970-71 Edition available: Write Government Printing Office for price.

C. Students Enrolled for Advanced Degrees, Part A, Summary Data,; Part B. Detailed Data by Institution. Enrollment by sex, full-time and part-time attendance, nationally, and by institution. (Annual) Part A $.55, Part B $2.25. Available from Government Printing Office, address above.

*Publications marked * are available from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at price indicated.

D. Fall Enrollment in Higher Education. Enrollment by Sex, full-time and part-time attendance, nationally, and by institution. (Annual) Available from Government Printing Office, address above. $2.00.

E. American Science Manpower 1970. National Science Foundation. Available from Superintendent of Documents, Government Printing Office, Washington, D.C. 20202. $2.00. Detailed data by sex on numbers, specialties, employment status, earnings, etc.

F. Summary Reports, Doctorate Recipients from U.S. Universities. (Annual Reports from 1969-1972). National Research Council, National Academy of Science, 2101 Constitution Ave., N.W., Washington, D.C. 20418. Field of doctorate, present area of employment and other data by sex. 1973 survey will include race.

G. Equal Employment Opportunity for Minority Graduates (See p. C-1) is also a good information source on minority graduates.

VI. State and Local Data Sources

In addition to sources already listed, the following sources can provide useful detailed local data:

A. State and Local Employment Services.* Basic data and special studies on employment and unemployment. Many State Services prepare special skill employment and unemployment surveys, market studies, etc. Contact Offices of Research, Employer Relations or Labor Market staff at state level.

B. State and City Department of Human Resources, and Departments of Industry, Labor or Commerce also prepare employment, unemployment and skill surveys. A listing of major state (as well as Federal) agencies concerned with manpower, employment, industrial relations and fair employment practices that can provide data and information on training programs and recruitment sources is: Labor Offices in the United States and Canada, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

C. Local and State Chambers of Commerce. (Consult telephone directory).

D. Regional Offices, Equal Employment Opportunity Commission.** Further assistance on data and recruitment sources.

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*See page B-12 for listing of State Employment Services. Consult telephone directory for local offices.

**See inside back cover for listing of Regional EEOC Offices.

E. Regional Offices, Manpower Administration, U.S. Department of Labor.* Information on employment, training and job programs.

F. Regional Offices, Women's Bureau, U.S. Department of Labor.**

G. Local offices of Urban League, Urban Coalition, and other minority organizations.***

NEW DATA "PACKAGE" FOR AFFIRMATIVE ACTION FROM U.S. DEPARTMENT OF LABOR.

The Labor Department has announced availability of standardized "packets" of local work force statistics, including minimum data needed to analyze "underutilization" of minorities and women for Affirmative Action Plans. Data "packets" will be available at State Employment Security Offices****for some areas starting in November, 1973, and are expected to be available for all areas by Spring 1973. The packets will include recent information by sex and minority status on: population and labor force, employment status, occupations of employed persons, last occupations of experienced unemployed workers and occupational characteristics of job applicants at public employment offices.

*See page B-6 for listing of Regional Manpower Administration Offices.

**See page B-9 for list of Regional Women's Bureau Offices.

***See Appendix C for some Organizational Resources.

****See Page B-12 for listing of State Employment Offices. Consult telephone directory for local offices.

REGIONAL MANPOWER ADMINISTRATION OFFICES
U.S. DEPARTMENT OF LABOR

REGION and STATES	
REGION I	
Connecticut Maine Massachusetts New Hampshire Rhode Island Vermont	Regional Manpower Administrator U.S. Department of Labor J. F. Kennedy Building Government Center, Room 1703 Boston, Massachusetts 02203 (617) 223-6439
REGION II	
New Jersey New York Puerto Rico Virgin Islands	Regional Manpower Administrator U. S. Department of Labor 1515 Broadway New York, New York 10036 (212) 971-5445
REGION III	
Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia	Regional Manpower Administrator U. S. Department of Labor 3535 Market Street Gateway Building Philadelphia, Pennsylvania 19104 (215) 438-5200 or 438-5400
REGION IV	
Alabama Florida Georgia Kentucky Mississippi North Carolina South Carolina Tennessee	Regional Manpower Administrator U.S. Department of Labor 1371 Peachtree Street, N.E. Room 405 Atlanta, Georgia 30309 (404) 526-5411

REGION and STATES

REGION V

Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin

Regional Manpower Administrator
U.S. Department of Labor
300 South Wacker Drive
Chicago, Illinois 60606

(312) 353-4135

REGION VI

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Regional Manpower Administrator
U.S. Department of Labor
Federal Building, U.S. Court House
1100 Commerce Street
Dallas, Texas 75202

(214) 749-2841

REGION VII

Iowa
Kansas
Missouri
Nebraska

Regional Manpower Administrator
U.S. Department of Labor
Federal Building, Room 3000
911 Walnut Street
Kansas City, Missouri 64106

(816) 374-3796

REGION VIII

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

Regional Manpower Administrator
U.S. Department of Labor
16015 Federal Office Building
1961 Stout Street
Denver, Colorado 80202

(303) 837-4477

REGION and STATES	
REGION IX	
Arizona California Hawaii Nevada Trust Territory	Regional Manpower Administrator U.S. Department of Labor Federal Building, Room 10064 450 Golden Gate Avenue Post Office Box 36084 San Francisco, California 94102 (415) 556-7414
REGION X	
Alaska Idaho Oregon Washington	Regional Manpower Administrator U.S. Department of Labor 2154 Arcade Plaza 1321 Second Avenue Seattle, Washington 98101 (202) 442-7700
DISTRICT OF COLUMBIA	
	Administrator for District of Columbia Manpower Administration District Building, Room 220 14th and E Streets, N.W. Washington, D.C. 20004 (202) 629-3663

WOMEN'S BUREAU
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR

REGION I: Boston

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Regional Director
John F. Kennedy Federal Building
Room 1612-C, Government Center
Boston, Massachusetts 02203

(617) 223-5565

REGION II: New York

New Jersey
New York
Puerto Rico
Virgin Islands

Regional Director
1515 Broadway - Room 3302
New York, New York 10036

(212) 971-5451

REGION III: Philadelphia

Delaware
District of Columbia
Maryland
Pennsylvania
Virginia
West Virginia

Regional Director
15th Floor - Gateway Building
3535 Market Street
Philadelphia, Pennsylvania 19104

(215) 597-1183 or 597-1184

REGION IV: Atlanta

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee

Regional Director
1371 Peachtree Street, N.E.
Room 315
Atlanta, Georgia 30309

(404) 526-5461

REGION V: Chicago

Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin

Regional Director
Everett McKinley Dirksen Building
219 South Dearborn Street - Room 732
Chicago, Illinois 60604

(312) 353-6985

REGION VI: Dallas

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Regional Director
Federal Office Bldg. & U.S. Courthouse
1100 Commerce Street - Room 13F12
Dallas, Texas 75202

(214) 749-2568

REGION VII: Kansas City

Iowa
Kansas
Missouri
Nebraska

Regional Director
200 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

(816) 374-5383

REGION VIII: Denver

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

Regional Director
244 Federal Bldg. & New Custom House
721 19th Street
Denver, Colorado 80202

(303) 837-4138

REGION IX: San Francisco

Arizona
California
Hawaii
Nevada

Regional Director
450 Golden Gate Avenue
Box 36017, Room 10341
San Francisco, California 94102

(415) 556-2377

REGION X: Seattle

Alaska
Idaho
Oregon
Washington

Regional Director
2015 Smith Tower
506 Second Avenue
Seattle, Washington 98104

(206) 442-1534

STATE EMPLOYMENT SECURITY AGENCIES

ALABAMA	Department of Industrial Relations Industrial Relations Building Montgomery, Alabama 36104
ALASKA	Employment Security Division Department of Labor P. O. Box 3-7000 Juneau, Alaska 99801
ARIZONA	Employment Security Commission P. O. Box 6339 (ZC 85005) 1717 West Jefferson Street Phoenix, Arizona 85007
ARKANSAS	Employment Security Division Department of Labor Employment Security-Welfare Building Box 2981 Little Rock, Arkansas 72203
CALIFORNIA	Department of Human Resources Development 800 Capitol Mall Sacramento, California 95814
COLORADO	Division of Employment 1210 Sherman Street Denver, Colorado 80203
CONNECTICUT	Employment Security Division Hartford, Connecticut 06115
DELAWARE	Department of Labor 801 West Street Wilmington, Delaware 19899

DISTRICT OF COLUMBIA	D. C. Manpower Administration District Building 14th and E Streets, N.W. Washington, D.C. 20004 District Unemployment Compensation Board Sixth and Pennsylvania Avenue, N.W. Washington, D.C. 20001
FLORIDA	Department of Commerce Collins Building Tallahassee, Florida 32304
GEORGIA	Employment Security Agency State Labor Building Atlanta, Georgia 30334
GUAM	Department of Labor Government of Guam Agana, Guam 96910
HAWAII	Department of Labor and Industrial Relations 825 Mililani Street Honolulu, Hawaii 96813
IDAHO	Department of Employment P. O. Box 7189 317 Main Street Boise, Idaho 83707
ILLINOIS	Employment Security Administration Department of Labor 165 North Canal Street Chicago, Illinois 60606
INDIANA	Employment Security Division 10 North Senate Avenue Indianapolis, Indiana 46204
IOWA	Employment Security Commission 1000 East Grand Avenue Des Moines, Iowa 50319

KANSAS	Employment Security Division State Labor Department 401 Topeka Boulevard Topeka, Kansas 66603
KENTUCKY	Department of Economic Security New Capitol Annex Building Frankfort, Kentucky 40601
LOUISIANA	Department of Employment Security Employment Security Building 1001 North 23rd Street P. O. Box 44094 Capitol Station Baton Rouge, Louisiana 70804
MAINE	Employment Security Commission 20 Union Street Augusta, Maine 04330
MARYLAND	Department of Employment and Social Services State Office Building 1100 North Eutaw Street Baltimore, Maryland 21201
MASSACHUSETTS	Division of Employment Security Charles F. Hurley Employment Security Building Government Center Boston, Massachusetts 02114
MICHIGAN	Employment Security Commission Department of Labor 510 Boulevard Building 7310 Woodward Avenue Detroit, Michigan 48202
MINNESOTA	Department of Manpower Services 390 North Robert Street St. Paul, Minnesota 55101

MISSISSIPPI	Employment Security Commission P. O. Box 1699 1520 West Capitol Street Jackson, Mississippi 39205
MISSOURI	Division of Employment Security Department of Labor and Industrial Relations 421 East Dunklin Street Jefferson City, Missouri 65101
MONTANA	Employment Security Division Lockey and Roberts Streets P. O. Box 1728 Helena, Montana 59601
NEBRASKA	Division of Employment Department of Labor P. O. Box 4600 State House Station 550 South Sixteenth Street Lincoln, Nebraska 68509
NEVADA	Employment Security Department 500 East Third Street Carson City, Nevada 89701
NEW HAMPSHIRE	Department of Employment Security 32 South Main Street Concord, New Hampshire 03301
NEW JERSEY	Department of Labor and Industry John Fitch Plaza P. O. Box V Trenton, New Jersey 08625
NEW MEXICO	Employment Security Commission The National Building P. O. Box 1928 505 Marquette N.W. Albuquerque, New Mexico 87103
NEW YORK	Department of Labor State Office Building Campus Albany, New York 12226

NORTH CAROLINA	Employment Security Commission P. O. Box 25,903 Jones and McDowell Streets Raleigh, North Carolina 27611
NORTH DAKOTA	Employment Security Bureau 201 East Broadway P. O. Box 1537 Bismarck, North Dakota 58501
OHIO	Bureau of Employment Services P. O. Box 1618 145 South Front Street Columbus, Ohio 43216
OKLAHOMA	Employment Security Commission Will Rogers Memorial Office Building Oklahoma City, Oklahoma 73105
OREGON	Employment Division 403 Labor and Industries Building Salem, Oregon 97310
PENNSYLVANIA	Bureau of Employment Security Department of Labor and Industry Building Seventh and Forster Streets Harrisburg, Pennsylvania 17121
PUERTO RICO	Bureau of Employment Security 414 Barbosa Avenue Hato Rey, Puerto Rico 00917
RHODE ISLAND	Department of Employment Security 24 Mason Street Providence, Rhode Island 02903
SOUTH CAROLINA	Employment Security Commission 1225 Laurel Streets P. O. Box 995 Columbia, South Carolina 29202

SOUTH DAKOTA	Employment Security Department 607 North Fourth Street Aberdeen, South Dakota 57401
TENNESSEE	Department of Employment Security Cordell Hull State Office Building Nashville, Tennessee 37219
TEXAS	Employment Commission TEC Building Austin, Texas 78701
UTAH	Department of Employment Security Industrial Commission 174 Social Hall Avenue P. O. Box 11249 Salt Lake City, Utah 84111
VERMONT	Department of Employment Security P. O. Box 488 Green Mountain Drive Montpelier, Vermont 05602
VIRGINIA	Employment Commission 703 East Main Street (ZC 23219) P. O. Box 1358 Richmond, Virginia 23211
VIRGIN ISLANDS	Employment Security Agency P. O. Box 1092 Charlotte Amalie St. Thomas, Virgin Islands 00801
WASHINGTON	Employment Security Department Employment Security Building P. O. Box 367 Olympia, Washington 98501
WEST VIRGINIA	Department of Employment Security California and Washington Streets Charleston, West Virginia 25305

WISCONSIN	Employment Security Division 201 East Washington Drive Madison, Wisconsin 53702
WYOMING	Employment Security Commission ESC Building Center and Midwest Streets P. O. Box 760 Casper, Wyoming 82601

APPENDIX C

SOME RESOURCES FOR RECRUITMENT

I. The Office of Voluntary Programs, EEOC, 1800 G St., N.W., Washington, D. C. 20506, offers the following services:

A. The Educational Programs Division, (address above) (202) 343-7908, has available a detailed listing of "talent banks" and specialized referral sources throughout the country.

B. The Talent Search Skills Bank (address above) (202) 343-6286, maintains a file of minority and female applicants with professional skills and can refer qualified individuals to employers.

C. Regional Voluntary Programs Officers (see list of Regional Offices, inside backcover) can provide further information on local referral sources.

II. Directories and Professional Rosters*

A. Equal Employment Opportunity for Minority Group College Graduates: Locating, Recruiting, Employing (1972). Compiled by Robert Calvert, Jr., $4.95 (prepaid) $5.95 (if billed). Garrett Park Press, Garrett Park, Md. 20766.

A comprehensive and useful directory. Specific listings include: names, addresses, and enrollment by degree level and field of specialization of predominantly black colleges and universities, and of institutions with substantial number (numbers listed) of Spanish-Surnamed, American Indian and Oriental American students; numbers of identified minorities at all other higher educational institutions; names and addresses of media (newspapers, periodicals, broadcast) serving each minority group; a comprehensive listing of minority organizations and consulting firms, Human Rights Commissions and other agencies. The publication also has many specific suggestions on methods and techniques of recruiting and retaining minorities.

B. A Directory of Predominantly Black Colleges and Universities in the U.S., National Alliance of Businessmen, 1730 K St., N.W., Washington, D. C. 20006. (Revised Edition, 1973). Enrollment, types of degrees offered and numbers granted.

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* Unless otherwise noted, publications are available without charge. See page C-6 for additional listing.

C. Directory of Minority College Graduates 1971-72. Prepared by Manpower Administration, U.S. Department of Labor. Identifies black, Spanish-surnamed and other minority graduates of 1971 and '72 by name, address, degree earned and major discipline. Available from Superintendent of Documents, Government Printing Office, Washington, D. C. 20402. $8.00.

Computer listings of these graduates by specific educational disciplines are available from: Office of Equal Employment Opportunity, Office of Assistant Secretary for Manpower, U.S. Department of labor, Washington, D. C. 20210. Cost, if any depends on amount of computer work required.

D. Spanish-Surnamed College Graduates. Cabinet Committee on Opportunity for the Spanish Speaking, 1707 H St., N.W. Washington, D. C. 20506. Updated annually. Includes names, addresses, college and major discipline of juniors, seniors, and graduates with Spanish surnames. Listing includes schools and, graduating students by state and by discipline. The Cabinet Committee also makes job referrals.

E. 1971-72 Accredited Institutions of Higher Education. Federation of Regional Accrediting Commissions, American Council on Education, 1 Dupont Circle, N.W., Washington, D. C. 20036. Lists all accredited institutions, by state, with number of male and female students.

F. Women's Caucuses, Committees and Professional Associations and Supplements: Recruiting Aids #1 and #2; and Recruiting Minority Women. Available from Association of American Colleges, Project on the Status and Education of Women, 1818 R St., N.W. Washington, D. C. 20009.

Comprehensive listings include many professional registries of women in specific fields, and caucuses in professional societies which provide formal or informal referral services. Also included: organizations representing male and female minority professionals.

G. Civil Rights Directory. Office of Information, U.S. Commission on Civil Rights, 1121 Vermont Ave., N.W., Washington, D. C. 20225. (Revised edition available Fall, 1973.) Lists major national and local civil rights, educational, women's, religious and fraternal organizations, and public agencies (local, state and federal) responsible for enforcing civil rights laws.

H. Directory of Labor Offices in the United States. Lists all federal and state agencies concerned with manpower and training information.*

I. Directory of Spanish-Surnamed and Native Americans in Science and Engineering. Dr. Joseph Martinez, Foundation for Promoting Advanced Studies, 464 Furnace Road, Ontario, N.Y. 14519. $15.00.

J. Women's Organizations and Leaders: 1973 Directory of Women's Organizations. Today Publications, National Press Building, Washington, D. C. 20004. $25.00. Comprehensive listing indexed geographically (by state) and by subject of major activity. Includes national, state and local organizations.

K. Engineering and Technician Enrollments, Fall 1971. Engineer's Joint Council, Engineering Manpower Commission, 345 E. 45th St., New York, N.Y. 10017. $20.00. Lists number of women and Negroes, by institution, in 1st through 5th year of Bachelor's, Masters' and Doctor's degree programs.

III. Organizational Resources

Following are some major national organizations prepared to make referrals or to direct the employer to their local units which can refer minorities and females at various skills levels.

A. General Resources

1. Local Employment Services Offices are important referral sources. (Consult local telephone directory). Urban areas have professional listings.

2. City and State Human Resources Departments and Human Rights Commissions* may be helpful referral sources.

3. Regional Offices of Manpower Administration, U.S. Department of Labor.**

B. Some National Organizational Referral Sources for Minorities (Male and Female) at Various Skill Levels.

1. Americans for Indian Opportunity
   1820 Jefferson Place, N.W.
   Washington, D. C. 20036

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* See p. B-4 for Directory listing; also consult telephone directory.

** See page B-6 for listing.

2. American G. I. Forum
   P. O. Box 336
   Beeville, Texas
   (512) 358-2535

3. Bureau of Indian Affairs
   Indian Federal Employment
   Referral Program
   Albuquerque, New Mexico 87103

4. Commonwealth of Puerto Rico
   Department of Labor - Migration Division
   322 West 45th Street
   New York, N.Y. 10036
   (212) 245-0700

5. League of United Latin American Citizens (LULAC)
   10966 LeCont Ave.
   Los Angeles, California 90024
   (213) 679-8225

6. National Alliance of Businessmen
   1730 K St., N.W.
   Washington, D. C. 20006
   (202) 254-7105

   Local units in 150 cities provide referrals and funds for training.

7. National Association for the Advancement of Colored People (NAACP)
   1790 Broadway
   New York, N.Y. 10019
   (212) 751-0300

8. National Puerto Rican Forum, Inc.
   214 Mercer Street
   New York, N.Y. 10012
   (212) 533-0100

9. National Spanish Speaking Management Association
   1625 Eye St., N.W.
   Washington, D. C. 20006
   (202) 785-3500

10. National Urban League
    National Skills Bank
    477 Madison Avenue
    18th Floor
    New York, N.Y. 10022
    (212) 751-6077

11. Opportunities Industrialization Centers (OIC)
(Headquarters)
100 West Coulter St.
Philadelphia, Pa. 19144
(215) VI9-3010

Local OIC's provide job training and referrals.

12. Puerto Rican Research & Resource Center
1519 Connecticut Ave., N.W.
Washington, D. C. 20036
(202) 677-7940

13. Service Employment Rehabilitation (SER)
9841 Airport Blvd. Rm. 1020
Tishman Bldg.
Los Angeles, California 90045
(213) 649-1511

C. Some National Referral Sources for Women with Specific Skills

1. American Association of University Women
2401 Virginia Avenue, N.W.
Washington, D. C. 20037
(202) 785-7750

Compiles lists of professional registries in all major fields.

2. National Federation of Business & Professional Women's Clubs Talent Bank
2012 Massachusetts Avenue, N.W.
Washington, D. C. 20036
(202) 293-1100

In cooperation with more than 20 women's professional organizations, maintains a file of professional women's resumes which are matched to employer requests.

3. National Organization for Women (NOW)
1957 East 73rd Street
Chicago, Illinois 60649
(312) 324-3067

Local units may provide some referrals.

4. National Association of College Women
4620 Kossuth Avenue
St. Louis, Mo. 63115

An association of black college graduates. Provides some informal referral services.

5. Negro Sororities and Service groups. (Can provide some referrals).

   Alpha Kappa Alpha
   1751 New Hamsphire Avenue, N.W.
   Washington, D. C. 20009
   (202) 387-3103

   Delta Sigma Theta
   1814 M Street, N.W.
   Washington, D. C. 20036
   (202) 338-7727

   Zeta Phi Beta
   1734 New Hampshire Avenue, N.W.
   Washington, D. C. 20009
   (202) 387-3103

6. Professional Women's Caucus
   P. O. Box 1057
   Radio City Station
   New York, New York 10019

7. Women's Equity Action League (WEAL)
   538 National Press Building
   Washington, D. C. 20004
   (202) 638-4560

   Units of this organization in 30 states provide informal referrals of professional women.

8. Federation of Organizations for Professional Women
   1346 Connecticut Ave., N.W.
   Washington, D. C. 20036 (202) 833-1998
   Report on Registries. Lists 36 women's organizations with professional registries. $5.00. (1973.)

   Additional Reference. A 214 page Directory for Reaching Minority Groups, issued by the Bureau of Apprenticeship and Training, U.S. Department of Labor, in August, 1973, lists Federal, state and local governmental units, community action agencies, educational institutions, fraternities, sororities, press-braodcast media and religious and minority organizations by State and city, with addresses and telephone numbers. Single copies may be obtained without cost from Office of Information, Manpower Administration, U.S. Department of Labor, Washington, D. C. 20210.

APPENDIX D

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EEOC Guidelines	
1. Guidelines on Employee Selection Procedures	D-1
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Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

By virtue of the authority vested in it by section 713 of title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e–12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby issues Title 29, Chapter XIV, § 1607 of the Code of Federal Regulations.

These Guidelines on Employee Selection Procedures supersede and enlarge upon the Guidelines on Employment Testing Procedures, issued by the Equal Employment Opportunity Commission on August 24, 1966. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Sec.
1607.1 Statement of purpose.
1607.2 "Test" defined.
1607.3 Discrimination defined.
1607.4 Evidence of validity.
1607.5 Minimum standards for validation.
1607.6 Presentation of validity evidence.
1607.7 Use of other validity studies.
1607.8 Assumption of validity.
1607.9 Continued use of tests.
1607.10 Employment agencies and employment services.
1607.11 Disparate treatment.
1607.12 Retesting.
1607.13 Other selection techniques.
1607.14 Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under Sec. 713, 78 Stat. 265, 42 U.S.C. sec. 2000e–12.

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train, refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin. Subsection (h) of section 703 allows such persons "* * * to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

§ 1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided*, That no significant differences exist between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently

included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See § 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test andcriterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5(c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard

not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1607.8(a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

§ 1607.13 Other selection techniques.

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

The guidelines in this part are effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., 21st day of July 1970.

[SEAL] WILLIAM H. BROWN III,
Chairman.

[F.R. Doc. 70-9963; Filed, July 31, 1970; 8:48 a.m.]

GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Title 29, Labor, Chapter XIV, Part 1604, As Amended
(As of March 31, 1972)

PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

1604.1 General Principles.
1604.2 Sex as a Bona Fide Occupational Qualificiation.
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1604.4 Discrimination Against Married Women.
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1604.8 Relationship of Title VII to the Equal Pay Act.
1604.9 Fringe Benefits.
1604.10 Employment Policies Relating to Pregnancy and Childbirth.

Authority: The provisions of this Part 1604 are issued under Section 713(b), 78 Stat. 265, 42 U.S.C., Sec. 2000e-12.

Source: The provisions of this Part 1604 appear at 37 F.R. 6835, April 5, 1972, unless otherwise noted.

For further information and interpretations, please contact:

U.S. Equal Employment Opportunity Commission
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PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, § 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Section 1604.1 General Principles.

(a) References to "employer" or "employers" in Part 1604 state principles that are applicable not only to employers, but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

Section 1604.2 Sex as a Bona Fide Occupational Qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels -- "Men's jobs" and "Women's jobs" -- tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented state employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that state laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by Title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established

unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of states require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by state law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented state employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of Title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the state law is in conflict with and superseded by Title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some states require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

Section 1604.3 Separate Lines of Progression and Seniority Systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect

any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression" and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

Section 1604.4 Discrimination Against Married Women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

Section 1604.5 Job Opportunities Advertising.

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

Section 1604.6 Employment Agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Section 1604.7 Pre-employment Inquiries as to Sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Section 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is co-extensive with that of the other prohibitions contained in Title VII and is not limited by Section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of Section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under Title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencment and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

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TITLE 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

Part 1606—Guidelines on Discrimination Because of National Origin

By virtue of the authority vested in it by section 713(b) of the Act, 42 U.S.C., section 2000e-12(b), the Commission hereby issues Title 29, Chapter XIV, § 1601.1 in the Code of the Federal Regulations.

Because the provisions of the Administrative Procedure Act (5 U.S.C. 1003) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date, are inapplicable to these interpretive rules, the guideline shall become effective immediately and shall be applicable with respect to charges presently before or hereafter filed with the Commission.

§ 1606.1 Guidelines on discrimination because of national origin.

(a) The Commission is aware of the widespread practices of discrimination on the basis of national origin, and intends to apply the full force of the law to eliminate such discrimination. The bona fide occupational qualification exception as it pertains to national origin cases shall be strictly construed.

(b) Title VII is intended to eliminate covert as well as overt practices of discrimination and the Commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations. Examples of cases of this character which have come to the attention of the Commission include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's language or mother tongue, and where English language skill is not a requirement of the work to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized by persons of a given national origin; denial of equal opportunity because their name or that of their spouse reflects a certain national origin, and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved.

(c) Title VII of the Civil Rights Act of 1964 protects all individuals, both citizen and noncitizens, domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex, or national origin.

(d) Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship, except that it is not an unlawful employment practice for an employer, pursuant to section 703(g), to refuse to employ any person who does not fulfill the requirements imposed in the interests of national security pursuant to any statute of the United States or any Executive order of the President respecting the particular position or the particular premises in question.

(e) In addition, some States have enacted laws prohibiting the employment of noncitizens. For the reasons stated above such laws are in conflict with and are, therefore, superseded by Title VII of the Civil Rights Act of 1964.

This guideline is effective upon publication.

Signed at Washington, D.C., this 7th day of January 1970.

[Seal] William H. Brown III
Chairman

[F.R. Doc. 70-447; Filed Jan. 9, 1970, 11:45 a.m.]

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

Observance of the Sabbath and Other Religious Holidays

By virtue of its authority under section 713 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-12(b), the Equal Employment Opportunity Commission hereby amends § 1605.1, Guidelines on Discrimination Because of Religion. This amendment becomes effective immediately and shall be applicable with respect to cases presently before or hereafter filed with the Commission. Section 1605.1 as amended shall read as follows:

§ 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people.

Signed at Washington, D.C., this 10th day of July 1967.

[SEAL] LUTHER HOLCOMB,
Acting Chairman.

[F.R. Doc. 67-8066; Filed, July 12, 1967; 8:48 a.m.]

EXECUTIVE ORDER

11246

EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I - Nondiscrimination in Government Employment

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. , 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contacting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24 , 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of Sept. 24 , 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24 , 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers of providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of thepolicy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may;

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have compiled or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce these provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

Subpart E -- Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective 30 days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

September 24, 1965.

EXECUTIVE ORDER
11375

AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

> "SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

> "SECTION 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the

basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

October 13, 1967.

# # # #

U.S. DEPARTMENT OF LABOR*
OFFICE OF FEDERAL CONTRACT COMPLIANCE
WASHINGTON, D.C. 20210

CHAPTER 60 -- Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

(Reprint from FEDERAL REGISTER, VOL 36, NO. 234—SATURDAY, DECEMBER 4, 1971*)*

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

On August 31, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 17444) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60–2, dealing with affirmative action programs. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendments.

Having considered all relevant material submitted, I have decided to, and do hereby amend Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60–2, reading as follows:

Subpart A—General

Sec.
60–2.1 Title, purpose and scope.
60–2.2 Agency Action.

Subpart B—Required Contents of Affirmative Action Programs

60–2.10 Purpose of affirmative action program.
60–2.11 Required utilization analysis.
60–2.12 Establishment of goals and timetables.
60–2.13 Additional required ingredients of affirmative action programs.
60–2.14 Compliance status.

Subpart C—Methods of Implementing the Requirements of Subpart B

60–2.20 Development or reaffirmation of the equal employment opportunity policy.
60–2.21 Dissemination of the policy.
60–2.22 Responsibility for implementation.
60–2.23 Identification of problem areas by organization unit and job classification.
60–2.24 Development and execution of programs.
60–2.25 Internal audit and reporting systems.
60–2.26 Support of action programs.

Subpart D—Miscellaneous

60–2.30 Use of goals.
60–2.31 Preemption.
60–2.32 Supersedure.

AUTHORITY: The provisions of this Part 60–2 issued pursuant to sec. 201, Executive Order 11246 (30 F.R. 12319).

Subpart A—General

§ 60–2.1 Title, purpose and scope.

This part shall also be known as "Revised Order No. 4," and shall cover non-construction contractors. Section 60–1.40 of this Chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more develop a written affirmative action compliance program for each of its establishments, and such contractors are now further required to revise existing written affirmative action programs to include the changes embodied in this order within 120 days of its publication in the FEDERAL REGISTER. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then set forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C are concerned with affirmative action plans only.

Relief for members of an "affected class" who, by virtue of past discrimination, continue to suffer the present effects of that discrimination must either be included in the contractor's affirmative action program or be embodied in a separate written "corrective action" program. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60–2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

§ 60–2.2 Agency action.

(a) Any contractor required by § 60–1.40 of this chapter to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 F.R. 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32, the contractor is unable to comply with the equal employment opportunity clause.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments, the contracting officer shall notify the Director and declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations or, unless, upon review, it is determined by the Director that substantial issues of law or fact exist as to the contractor's responsibility to the extent that a hearing is, in his sole judgment, required prior to a determination that the contractor is nonresponsible: *Provided*, That during any pre-award conferences every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60–1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or that his program is not acceptable to the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the

*Contact Office of Federal Contract Compliance (address above) for information on proposed changes in this Order, pending as of December 1, 1973.

Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60-1.26(b), giving the contractor 10 days to request a hearing. If a request for hearing has not been received within 10 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60-1.26(b) of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

Subpart B—Required Contents of Affirmative Action Programs

§ 60-2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

§ 60-2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive order programs and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO-1) designations: officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO-1 designations, women are likely to be underutilized in departments and jobs within departments as follows: officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in his analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) An analysis of all major job classifications at the facility, with explanation if minorities or women are currently being underutilized in any one or more job classifications (job "classification" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. In making the work force analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job classification the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job classification, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

§ 60-2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60-2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction and turnover of and in the work force.

(g) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) Where the contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in 60-2.11 and must detail his reason for a lack of a goal.

(k) In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the compliance agency or OFCC.

(l) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(m) Copies of affirmative action programs and/or copies of support data shall be made available to the compliance agency or the Office of Federal Contract Compliance, at the request of either, for such purposes as may be appropriate to the fulfillment of their responsibilities under Executive Order 11246, as amended.

§ 60–2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification.

(e) Establishment of goals and objectives by organizational units and job classification, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance or personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60–20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

§ 60–2.14 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to this program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Methods of Implementing the Requirements of Subpart B

§ 60–2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, train, and promote persons in all job classifications, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964. Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60–2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractors affirmative action program and make available such elements of his program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's Equal Opportunity Programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in area such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60-2.23 Identification of problem areas by organizational units and job classifications.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60-2.11(d).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific work classifications.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Tests and other selection techniques not validated as required by the OFCC Order on Employee Testing and other Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60-2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCC Order pertaining to the validation of employee tests and other selection procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service

groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and females.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60–2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60–2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60–2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

§ 60–2.32 Supersedure.

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this Office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR 60–3 published in the FEDERAL REGISTER on October 2, 1971 or Employee Testing and Other Selection Procedures or 41 CFR 60–20 on Sex Discrimination Guidelines.

Effective date. This part shall become effective on the date of its publication in the FEDERAL REGISTER (12–4–71).

Signed at Washington, D.C., this 1st day of December 1971.

J. D. HODGSON,
Secretary of Labor.

HORACE E. MENASCO,
Acting Assistant Secretary for Employment Standards.

JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance

PROCESSING OF COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of Understanding

Part I. In order to reduce duplication of compliance activities and to facilitate information exchange, the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance (OFCC) agree to the following:

Prior to investigation of charges filed against Government contractors subject to Executive Order 11246 (30 F.R. 12319), as amended by Executive Order 11375 (32 F.R. 14303), EEOC will contact OFCC to (a) determine whether the contractor has been subjected to a compliance review within the past ninety (90) days, and (b) obtain and review copies of any documents relevant to EEOC's investigation which have been secured by the contracting agency in previous compliance reviews.

Prior to conducting compliance reviews or investigations of complaints against Government contractors, OFCC will contact EEOC to (a) determine whether EEOC has processed similar or identical charges against the contractor, (b) determine whether EEOC has information from prior investigations, if any which may have a bearing on the contractor's compliance with Executive Order 11246, as amended, and (c) obtain and review any pertinent documents.

It is anticipated that these contacts will be made routinely between EEOC regional offices and regional offices of OFCC. In order to facilitate this information exchange:

OFCC will provide EEOC with:

(a) Copies of reports from Compliance Agencies outlining contractor compliance reviews proposed for the next quarter.

(b) Current lists of Compliance Agencies with an associated list of contractor establishments located in each region of each Compliance Agency.

(c) A listing of compliance reviews actually completed each quarter indicating the results of such reviews.

EEOC will provide OFCC with:

(a) A monthly printout listing of all current charges under investigation, by region.

(b) A quarterly listing of all cases in which settlement or conciliation has been completed and the results, by region.

(c) A copy of each conciliation agreement prepared in EEOC field offices as a result of conciliation efforts.

Part II. The following procedure shall be applicable to all cases involving Government contractors subject to the provisions of Executive Order 11246, as amended.

(a) OFCC shall promptly transmit complaints filed with it under Executive Order 11246, as amended, to EEOC, which shall treat such complaints as charges filed under Title VII of the Civil Rights Act of 1964. EEOC will investigate such complaints, if practicable within sixty (60) days or, in the case of charges relating to practices occurring in a state or subdivision thereof in which EEOC is required to refer to an appropriate state or local agency under section 706(b) of Title VII, if practicable, within one hundred and twenty (120) days) from the date on which such charge is received by it. In investigating such charges, EEOC will act both on behalf of OFCC under Executive Order 11246, as amended, and on its own behalf under Title VII. EEOC shall promptly transmit its decision and findings of fact in all such cases to OFCC, which shall then take action in accordance with paragraph (b) of this part.

(b) Whenever EEOC determines that reasonable cause exists to believe that a Government contractor subject to Executive Order 11246, as amended, has violated Title VII, it shall transmit its decision and findings of fact to OFCC. The Director of OFCC then shall cause to be served upon such contractor a notice that reasonable cause exists to believe that such contractor is in violation of Executive Order 11246, as amended, and that should conciliation efforts of EEOC fail, said contractor shall have thirty (30) days to show cause why enforcement proceedings should not be commenced against it under Executive Order 11246, as amended. In order to develop effective working procedures to implement this paragraph, the following procedure shall apply during the first ninety (90) days of the operation of this Memorandum:

(1) EEOC shall determine which cases in which reasonable cause has been found against Government contractors will be referred to OFCC for issuance of thirty (30) day show cause notices under this paragraph.

(2) EEOC and OFCC will agree on the total number of cases to be referred.

(3) At the end of ninety (90) days, EEOC and OFCC will review the operation of this Memorandum, and adopt such adjustments to procedures as are appropriate in the light of experience.

(c) A finding by EEOC as to reasonable cause shall not be conclusive as to whether the contractor has violated Executive Order 11246, as amended, nor is anything contained herein intended to limit the authority of OFCC in conducting such further investigations or from instituting such further efforts to obtain compliance with the provisions of Executive Order 11246, as amended, including the commencement of show cause proceedings earlier than the period specified in paragraph (b) above, as it deems appropriate: *Provided*, That in further attempting to resolve questions of noncompliance, OFCC shall give appropriate consideration to the fact that voluntary conciliation efforts of EEOC have failed with respect to such contractor.

(d) EEOC and OFCC shall conduct periodic reviews of the implementation of this agreement, and shall, on an ongoing basis, continue their efforts to develop consistent systems, procedures, and standards in furtherance of the purposes of this agreement.

Signed at Washington, D.C., this 20th day of May 1970.

WILLIAM H. BROWN, III
Chairman, Equal Employment Opportunity Commission.

GEORGE P. SHULTZ,
Secretary of Labor.

JOHN L. WILLIS,
Director, Office of Federal Contract Compliance.

[F.R. Doc. 70-6665; Filed, May 28, 1970; 8:49 a.m.]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PROCESSING OF COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of Understanding

Cross Reference: For a document regarding memorandum of understanding relative to processing complaints of employment discrimination as between two agencies, see F.R. Doc. 70-6665, Department of Labor, Office of Federal Contract Compliance, *supra*.

APPENDIX E

I. EEOC publications

For full list of current EEOC publications written: EEOC Publications Unit, 1800 G St., N.W., Washington, D. C. 20506. Following is a selected list of publications useful for Affirmative Action programs.

A. Publications Available at no cost from Publications Unit, EEOC (address above).

Title VII of the 1964 Civil Rights Act, as Amended by the Equal Employment Act of 1972.

Equal Employment Opportunity is the Law (poster) Combined English/Spanish.

EEOC, Seventh Annual Report for Fiscal Year Ending June 30, 1972. (Limited Supply)

Could You Be Practicing Illegal Job Discrimination--And Not Even Know It? (Quiz)

Reprints from Rules and Regulations*

1. Guidelines on Discrimination Because of Sex (Revised March 31, 1972)
2. Guidelines on Discrimination Because of Religion (July 12, 1967)
3. Guidelines on Discrimination Because of National Origin (January 13, 1970)
4. Guidelines on Employee Selection Procedures (August 1, 1970)
5. Memorandum of Understanding Between OFCC, Department of Labor, and EEOC (May 29, 1970)

Revised Procedural Regulations: (Available as reprints)

1. Deferral to State and Local Agencies (June 25, 1973)
2. EEOC's Processing of a Charge of Discrimination (September 27, 1972).

* These Reprints Appear in Appendix D.

B. Research Reports Available at no cost from Office of Research, EEOC, 2121 K St., N.W., Washington, D. C. 20506.

(A number of other research reports on specific industries are available. Write Office of Research for full list of reports.)

Employment Profiles of Minorities and Women in the SMSA's of 17 Large Cities, 1971. (Issued 1973)

Equal Employment Opportunity Report No. 4; Job Patterns for Minorities and Women in Private Industry, 1970, Vol. I and II.

Changes in Employment of Minorities and Women, 1966 to 1970.

Promise vs. Performance: A Study of Equal Employment Opportunity in the Nation's Electric and Gas Utilities (June 1972).

C. Publications Available From Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

EEOC, Seventh Annual Report for Fiscal Year Ending June 30, 1972. Y3. EQ2: 1/973 $.70.

EEOC, Sixth Annual Report For Fiscal Year Ending June 30, 1971. EQ 2:1/971. $.70.

Personnel Testing and Equal Employment Opportunity. Y3 EQ2: 2P43 - $.55.

* U. S. GOVERNMENT PRINTING OFFICE : 1974 O - 531-471

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REGIONAL OFFICES, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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CHICAGO REGIONAL OFFICE 600 South Michigan Ave. Rm 611 Chicago, Illinois 60605 (312) 353-1223	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
DALLAS REGIONAL OFFICE 1100 Commerce St., Rm 5A4 Dallas, Texas 75202 (214) 749-1841	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
KANSAS CITY REGIONAL OFFICE 601 E. 12th St. Rm. 113 Kansas City, Missouri 64106 (816) 374-2781	Iowa, Kansas, Missouri, Nebraska
NEW YORK REGIONAL OFFICE Federal Office Building Room 4000 26 Federal Plaza New York, New York 10007 (212) 264-3640	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont
PHILADELPHIA REGIONAL OFFICE Jefferson Building 1015 Chestnut Street Philadelphia, Pennsylvania 19107 (215) 597-7784	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
SAN FRANCISCO REGIONAL OFFICE 300 Montgomery St., Suite 740 San Francisco, California 94104 (415) 556-1775	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, Samoa, South Dakota, Utah, Wake Island, Washington, Wyoming